

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-7663

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-7663

AJAX HARDWARE MANUFACTURING CORPORATION

Plaintiff-Appellant,

-v.-

INDUSTRIAL PLANTS CORPORATION

Defendant-Appellee.

On Appeal From The United States District Court
For The Southern District Of New York

JOINT APPENDIX

VOLUME V (Pages A-1307 through A-1637)

PORTIONS OF RECORD ON APPEAL



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Judge Levett
10/16/75
Ajax v
Industrial
1 a.m.

jqlt 1

(In open court - jury present.)

THE COURT: I believe Mr. Stream had some more cross examination. You understand, Mr. Klein, you are still under oath today.

H O W A R D M. K L E I N, resumed.

CROSS EXAMINATION CONTINUED

BY MR. STREAM:

Q Mr. Klein, you said that you are not a stockholder of Ajax, right?

A Yes.

Q And that you never were?

A Yes.

Q You were just an employee?

A Yes.

Q And that now you have no connection with Ajax at all?

A Yes.

Q Are you a close friend of Mr. Louis?

A I am a friend. I wouldn't say close.

Q A casual friend?

A A casual friend.

Q And you say you have no interest in this lawsuit, right?

A No financial interest.

A-1307

1 jqlt 2

Klein-cross

2 Q No piece of the action, no financial interest?

3 A That is correct, yes.

4 Q And that you did not come here under subpoena,
5 right?

6 A That is right.

7 Q Did you pay your car fare from California,
8 your airplane fare?

9 A I am being reimbursed my fare.

10 Q By whom?

11 A Ajax.

12 Q You say Mr. Louis did not ask you to come here,
13 just the lawyers?

14 A That is right.

15 Q Did Mr. Louis ever ask you whether you would
16 come here?

17 THE COURT: You better repeat that.

18 Q Mr. Louis never asked you to come here?

19 A No, he did not.

20 Q Does he know you are here?

21 A I told him I'm coming.

22 Q We were talking yesterday, and I want to
23 return very briefly to the subject, we were talking yesterday
24 about this loan and security agreement, Plaintiff's Exhibit
25 4, do you remember that document, sir?

1 jqlt 3

Klein-cross

2 A Yes.

3 Q The one that talks about Ajax lending or
4 arranging for the loan of up to \$270,000 for 120 days?

5 A Yes.

6 Q And the one that also gives Ajax or gave Ajax
7 a three-year option on fifty-one percent of its stock?

8 A Yes.

9 Q And the right to move in and use the plant
10 without rental or other charges, do you remember that?

11 A Yes.

12 Q As a consequence of the execution of that
13 document an application was made to the First Western Bank
14 of California for the loan which led to the execution by
15 Ajax of this guarantee, \$270,000 guarantee in September,
16 1966, and I am holding up Exhibit 11, Plaintiff's Exhibit 11
17 when that guarantee was executed which was as a consequence
18 of the earlier agreement, is that right?

19 MR. BRILL: Objection. The question is totally
20 incomprehensible, if you can read it back.

21 THE COURT: You might refer to what the agree-
22 ment was if it is an exhibit.

23 Q I am holding both of them in my hand, in my
24 right hand, Exhibits 4 -- and in my left hand, Exhibit 11.

25 When you and Ajax executed the guarantee, the

A-1309

1 jqlt 4

Klein

2 the \$270,000 guarantee reflected by Exhibit 11 which was
3 done, was it not, as a consequence of your having agreed to
4 do so in this agreement marked Plaintiff's 4, am I right?

5 MR. BRILL: Objection, your Honor. IT calls
6 for a conclusion of the witness as a consequence, the legal
7 consequences or factual consequences?

8 THE COURT: Overruled. Let the witness answer.

9 Q Wasn't it? Do you hear me, sir? Why don't you
10 answer me? If you don't, say so and I will move along to
11 another question.

12 A You asked not a simple question.

13 THE COURT: Listen, Mr. Klein.

14 (Question read.)

15 A Yes.

16 Q When you did execute this guarantee, it was
17 done --

18 THE COURT: Exhibit?

19 Q When you did execute this guarantee, Plaintiff's
20 11, it was done in the context of a loan application made
21 by Time & Micro for \$270,000, isn't that right?

22 A Ask the question again.

23 THE COURT: Read it.

24 (Question read.)

25 A Yes.

A-1310

jqlt 5

Klein

Q May I ask you this most respectfully:
Are you under sedation today?

MR. BRILL: I object.

THE COURT: I want to know and the jury should
know that.

MR. BRILL: That is a prejudicial question.

MR. STREAM: Nonsense.

A No.

Q Do you comprehend the questions being put to
you by me?

A I don't understand that question.

THE COURT: Read the question.

(Question read.)

A I have comprehended the ones I answered, yes.

Q When Time & Micro signed this note which was
received in evidence as Plaintiff's Exhibit 12 reflecting
a loan of \$270,000 by the First Western Bank & Trust
Company of Los Angeles, an application for the loan had to
be filed, isn't that so?

A I'm not sure I can answer that. I was not part
of arranging for the loan.

Q Who did?

A Norman Louis.

Q You were the vice president. Did you know the

250
Klein-cross

loan transaction was being arranged?

A I knew it was being arranged, but you asked me a specific detail and I wasn't present. I know a form was filled out and I was not present and I had no part in the negotiations.

Q Don't you know, sir, that the loan transaction had to be supported by application, just as a businessman, don't you know that?

A Normally it does, yes.

Q Pardon?

A It depends on the circumstances.

Q As a normal general rule a business loan of \$270,000 requires an application, doesn't it generally?

A Generally, yes.

Q And the same thing applies to an offer to guarantee the loan, the bank generally asks for underlying data from the guaranteeing company, doesn't it?

A Generally, yes.

Q Do you know whether you made, you being Ajax, do you know whether your company filed an application or any supporting papers in behalf of its willingness to act as a guarantor?

A I assume Ajax had to comply with any request the bank made regarding the loan, but I am not familiar with

A-1312

1 jqlt 7

Klein-cross

2 the details or what papers were involved. In fact, I did
3 not see them.

4 Q I didn't ask you whether you saw them. I asked
5 you a very simple question. Do you know whether Ajax submitted
6 supporting papers to show its credibility to act as a
7 guarantor? I correct myself, it is credibility to act as a
8 guarantor, do you understand the word credibility, meaning
9 good financial standing warranting acceptance by the
10 guarantee of the bank? Aren't you aware papers were served
11 with the bank to --

12 A I can't answer yes or no. Ajax was established
13 with this bank. This was the Ajax banker. They had an annual
14 arrangement for a line of credit and I have to assume this
15 guarantee was against the Ajax line of credit. That is why
16 it was granted.

17 You asked me if a specific paper was filed for
18 this loan and I am not sure, because when a company has a
19 line established with a bank on an annual basis they can get
20 accommodations against the line on an ongoing basis during
21 the year.

22 Q \$270,000?

23 A In Ajax's case, yes.

24 Q What was Ajax's line at this bank, what credit
25 line did it have?

A-1313

1 jqlt 8 Klein-cross

2 A It was probably in excess of \$1,000,000,
3 something in that line, an unsecured line.

4 Q An unsecured loan?

5 A Line of credit.

6 Q And unsecured line of credit of over \$1,000,000
7 at this bank available to Ajax, is that your testimony?

8 A I think something in that general area. I can't
9 remember the exact amount, but something in that general
10 area.

11 Q Do you know whether Ajax disclosed to the bank
12 the expectancy of the government contract?

13 MR. BRILL: Objection, your Honor, irrelevant
14 and there is no testimony as to any expectancy, whatever that
15 means.

16 THE COURT: There has been some testimony about
17 certain probability at least of a contract with respect to
18 fuses.

19 MR. BRILL: That certain negotiations or
20 bids were being worked on. The testimony as to expectancy
21 I don't believe is in the record.

22 THE COURT: I will sustain the objection.

23 Q Mr. Klein, do you know whether Ajax informed
24 the bank as one of the bases or elements to be considered by
25 the bank in accepting that guarantee and in giving that loan

1 jqlt 9 Klein-cross

2 that Ajax and Time & Micro expected to receive benefits
3 from a \$3,000,000 government contract; do you know whether
4 that was disclosed to the bank?

5 A I wasn't part of the negotiations.

6 THE COURT: Do you know whether it was, that
7 is the question.

8 THE WITNESS: I don't know whether it was or was
9 not. I don't know.

10 Q That is an answer, sir. "I don't know" is an
11 answer without further explanation. I expect that. You
12 don't know, you can't give me the information.

13 We established yesterday, did we not, that the
14 government contract became a reality and Ajax became the prime
15 contractor of a \$3,018,000 award in December 1966 on
16 October 1966, and specifically, October 19th, do you remember
17 establishing that?

18 A Yes.

19 Q At that point Ajax, as the prime contractor --
20 withdrawn.

21 You don't have that contract here today, do you?

22 A No.

23 Q You didn't have it yesterday either?

24 A No.

25 Q The prime contract, right?

1 jqbr 10 Klein-cross

2 Q At the time that you got that prime contract in
3 October of 1966, roughly two months after you got the
4 appraisal from Industrial Plants you hadn't engaged any sub-
5 contractors yet, had you?

6 MR. BRILL: Objection to this and all other questions
7 concerning the fuse contract with the government.

8 THE COURT: Overruled.

9 Q Please answer that.

10 (Question read.)

11 A Define the word "engage" for me.

12 Q You tell this jury what you think -- you
13 give us the definition of the word "engagement."

14 A Can I answer my --

15 Q Would you please answer the question. Tell this
16 learned jury what you think the word "engage" means.

17 MR. BRILL: Why do't we let Mr. Klein simply
18 answer the question.

19 THE COURT: Sustained on that one.

20 Q Engage means to sign up, to contract with, okay?
21 Sir?

22 THE COURT: All right.

23 Q Do you understand what I mean by engage?

24 A I still don't understand in this context.

25 Q All I want you to do now, Mr. Klein, is to

1 jqbr 11

Klein-cross

2 accept when I use the word engage I mean to contract with,
3 to enter into a formal relationship with, all right?

4 A Now I understand. The answer is no.

5 Q The answer to what?

6 A The question you asked me.

7 Q At the time when Ajax signed up this government
8 contract, this prime contractor on October 19, 1966, isn't
9 it a fact that Ajax had not engaged any subcontractors, right?

10 A Yes.

11 Q As a matter of fact, it didn't engage Time and
12 Micro until December, did it?

13 A I don't remember if the record says December. I
14 don't remember the date that a formal contract was signed with
15 Time & Micro.

16 Q Is it your testimony that there was a formal contract
17 signed with Time & Micro?

18 A A purchase order is a formal contract.

19 Q Is it your testimony that a formal contract of
20 engagement as subcontractor was signed by Ajax with
21 Time & Micro?

22 MR. BRILL: Objection.

23 THE COURT: Overruled.

24 Do you understand the question?

25 A I would like to hear the question repeated.

A-1317

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jqbr 12

Klein-cross

Q Is it your testimony that a formal contract, not a purchase order, a formal contract was signed by Ajax with Time & Micro?

A No, it isn't.

Q The fact is that all that took place between Time & Micro was that Ajax sent a telegram to Time & Micro and engaged them in that fashion, isn't that so?

A I don't remember.

Q Please be good enough to examine what will be marked Defendant's Exhibit G for identification and after I have had it marked for identification I will show it to you and I will ask you whether it doesn't refresh your recollection that the engagement was merely by telegram.

(Defendant's Exhibit G was marked for identification.)

MR. BRILL: I request to see the --

MR. STREAM: When I offer it.

THE COURT: He has not offered it.

MR. BRILL: He is showing it to the witness.

THE COURT: He can show whatever he pleases to refresh his recollection.

MR. BRILL: I will have a right to look at it.

THE COURT: You will learn about that refreshment.

Q Look at that exhibit marked G for identification,

xx

1 jqbr 13 Klein-cross

2 and do you notice --

3 THE COURT: Ask him if you are going to ask him
4 to refresh his recollection, just ask him that.

5 Q In looking at it, looking at the upper left-hand
6 corner under the word subcontract purchase order, can
7 you see that?

8 MR. BRILL: Can I be told what the document is so
9 I can look at it if I have to myself?

10 THE COURT: You can take it afterwards if you
11 want to.

12 MR. BRILL: Question are being asked on things
13 allegedly written in this contract and I can't see it.

14 THE COURT: It doesn't matter. If it refreshes
15 the witness' recollection it makes no difference.

16 Q Have you looked at that?

17 A You mean the upper right-hand corner?

18 Q I mean the upper left-hand corner, subcontract,
19 purchase order number, do you see that?

20 A Yes.

21 Q Does that refresh your recollection that the
22 engagement of Time & Micro was simply by telegram and not by
23 formal contract?

24 A I assume this document is correct so that is what
25 it says, yes.

1 jqbr 14

Klein-cross

2 MR. STREAM: I offer it in evidence.

3 MR. BRILL: Objection, your Honor.

4 THE COURT: You wanted to see it, now see it.

5 MR. STREAM: It is stipulated as authentic by a
6 stipulation between counsel.

7 MR. BRILL: Objection on the grounds of relevancy
8 and on the grounds it is incomplete by itself without subsequent
9 amending documents.

10 THE COURT: Overruled. He says it has refreshed
11 his recollection.

12 MR. BRILL: Statements contained therein concerning
13 what type of contract may have been in existence between
14 Ajax and Time & Micro and othersimilar statements are
15 strictly hearsay and not included in any admissions as to
16 authenticity of that document.

xx 17 (Defendant's Exhibit G was received in
18 evidence.)

19 THE COURT: You say, Mr. Stream, that it was agreed
20 that this was an authentic document, right?

21 MR. STREAM: Yes, counsel entered into a stipulation.

22 THE COURT: Overruled. I don't know why there is
23 any trouble about that one.

24 MR. BRILL: The fact it is authentic doesn't mean
25 it is admissible into evidence as your Honor well knows.

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Klein-cross

THE COURT: I beg your pardon, sir.

Q The fact is that that engagement took place --

THE COURT: You will have to reframe that question. State your whole question.

MR. STREAM: I will be done in ten minutes.

Q That engagement took place in December 1966, did it?

MR. BRILL: What engagement?

Q The engagement of Time & Micro by telegram by Ajax, that is when it took place, did it, or don't you know that either?

A You have to show me something.

THE COURT: Do you know?

THE WITNESS: I don't know.

(Defendant's Exhibit H was marked for identification.)

Q Would you be good enough to read this to yourself. It is addressed to your company.

THE COURT: What is the number?

Q Exhibit H, your Honor, and be good enough to examine that letter which is H for identification and tell us whether it doesn't refresh your recollection that this engagement of Time & Micro by Ajax took place in mid December 1966?

THE COURT: Well, what is the answer, Mr. Klein?

1 jqbr 16 Klein-cross

2 A Ask the question again.

3 (Question read.)

4 A I have to see the letter again. I didn't really
5 know the question.

6 THE COURT: Now you know the question and you
7 have the paper before you.

8 A The answer is yes.

9 Q Namely December 13, 1966, right?

10 A The answer is yes.

11 Q And on December 30, 1966 the United States
12 Government terminated the contract, didn't it?

13 MR. BRILL: Objection, your Honor, irrelevant.

14 THE COURT: Overruled.

15 A Yes.

16 Q Why?

17 MR. BRILL: Objection, your Honor, irrelevant
18 and beyond the scope of the witness' knowledge that he is
19 testifying to so far.

20 THE COURT: I will sustain it in the present form.

21 Q On what grounds did the government terminate
22 your prime contract, sir?

23 THE COURT: If you know.

24 A The notice said for convenience of the government.

25 Q What were the grounds given to you?

1 jqbr 17

Klein-cross

2 A They had a reduction in their requirement for
3 that particular item.

4 Q Were you so informed in writing?

5 A I don't remember.

6 Q You eventually, and by you I mean of course Ajax,
7 whenever I say you I mean Ajax, all right?

8 A Yes.

9 Q You eventually signed a termination settlement
10 contract with the government, didn't you?

11 MR. BRILL: Objection, your Honor, irrelevant and this
12 is precisely the area that we talked about that has no
13 connection to this lawsuit and cannot be connected to this
14 lawsuit.

15 THE COURT: It may have and I am going to allow
16 it.

17 MR. BRILL: Your Honor, the fact that it may have
18 is no grounds for allowing it unless it can have.

19 MR. STREAM: We went through this in chambers
20 and it is improper to talk about it in front of the jury.

21 THE COURT: You want the question read?

22 MR. STREAM: I will state it over.

23 Q The fact is that Ajax Hardware Corporation
24 entered into a termination agreement, a termination
25 settlement agreement with the United States Government

1 jqbr 18 Klein-cross
2 on March 25, 1969, isn't that so?

3 MR. BRILL: Objection, your Honor. Mr. Klein
4 was out of the employ of Ajax by March 1969. He cannot
5 have any possible knowledge of anything that happened
6 at Ajax after he left in March 1968.

7 THE COURT: When did you leave Ajax?

8 THE WITNESS: March 1968.

9 MR. BRILL: It is beyond his competence to testify.

10 THE COURT: Sustained.

11 Q Do you know that such a contract was entered into?

12 MR. BRILL: Objection, what contract?

13 A I don't know what happened after I left Ajax.

14 Q Do you know Ajax entered into a termination
15 settlement contract with the United States Government?

16 A I don't know.

17 MR. STREAM: I offer in evidence as Defendant's
18 Exhibit I the termination settlement contract between Ajax
19 and the United States Government which by the provisions of
20 the --

21 THE COURT: Don't state the provision.

22 MR. STREAM: The stipulation between counsel is
23 authentic.

24 (Defendant's Exhibit I was marked for
25 identification.)

1 jqbr 19 Klein-cross

2 MR. BRILL: This document contains numerous items
3 that cannot possibly be connected to this lawsuit with
4 minimal relevance involved in this document does not outweigh
5 the great and high prejudice to plaintiff because of state-
6 ments in that document which have nothing to do with this
7 lawsuit.

8 THE COURT: The objection is overruled and it is on
9 condition that there be ultimate proof of suitable claim as
10 to the defendant's asserted defense.

11 MR. BRILL: Your Honor --

12 THE COURT: The only thing before me is the ad-
13 missibility of the paper.

14 (Defendant's Exhibit I was received in
15 evidence.)

xx

16 MR. BRILL: Was Defendant Exhibit H for
17 identification marked into evidence?

18 MR. STREAM: I did what I wanted to do.

19 THE COURT: I don't know.

20 MR. STREAM: No, I didn't offer it in evidence.

21 THE COURT: All right.

22 MR. STREAM: I will reserve it for discussion in
23 summation with the jury and not now.

24 Q Frlm December 1966 on, Mr. Klein, which was
25 after the government had terminated the contract with Ajax,

1 jqbr 20 Klein-cross

2 did your company continue to have a relationship with Time
3 & Micro in connection with the other --

4 THE COURT: You see, you go beyond the time of his
5 service.

6 MR. STREAM: This is 1966, your Honor.

7 Q From the time after the government terminated the
8 contract, which is December 1966, did Ajax continue to
9 work at Time & Micro on other business or other work?

10 A I don't remember.

11 THE COURT: Do you know?

12 THE WITNESS: No, I don't know.

13 Q But how about by July or August 1967, do you know
14 whether Ajax was still working at Time & Micro at that time?

15 A They were not working there.

16 Q There was an auction sale, wasn't there, at Time
17 & Micro in October 1967?

18 A Yes.

19 Q And Ajax knew about that impending auction in the
20 middle of October, in July or August of 1967, didn't it?

21 MR. BRILL: Objection, your Honor, there was no
22 testimony or whether there is testimony that the auction
23 was not impending until August.

24 MR. STREAM: I beg your pardon?

25 MR. BRILL: The evidence is that the auction

1 jqbr 21 Klein-cross

2 agreement was signed in August.

3 (Question read.)

4 THE COURT: Objection overruled.

5 A I don't know.

6 Q You don't remember?

7 A I don't remember.

8 Q You knew about it at the beginning of October,
9 didn't you?

10 A Yes.

11 Q Because it took place in the middle of
12 October, didn't it?

13 A Yes.

14 Q At that point in time, Mr. Klein, did you offer
15 to the people at Time & Micro, Mr. Shriro, whoever it was,
16 to buy up that plant, the stock in that company of his ,
17 Time & Micro as you had the right to do under your loan and
18 security agreement, Plaintiff's 4, did you?

19 MR. BRILL: Objection, irrelevant.

20 Q To protect your investment, did you?

21 THE COURT: I will allow it.

22 MR. BRILL: Objection.

23 A I didn't hear the ruling.

24 Q He overruled the objection.

25 MR. BRILL: What is the answer?

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1 jqbr 22

Klein-cross

2 THE COURT: He heard the question. If we have to
3 have it recited we will have the reporter read it. This is
4 too constant to be necessary.

5 MR. STREAM: I will do it over.

6 MR. BRILL: Would you direct Mr. Stream to
7 reframe from making comments to the jury about musical
8 comedy? He may think it is a musical comedy but I think
9 it is a serious case.

10 THE COURT: I insist no comments are necessary.
11 The jury is to disregard all comments. Let us have
12 comments end.

13 MR. BRILL: The record should reflect he stated
14 to the jury that this is a Gilbert & Sullivan type of oper-
15 ation.

16 MR. STREAM: I said counsel was acting as though he
17 was playing in a Gilbert & Sullivan comedy.

18 THE COURT: Disregard the comment. It is withdrawn
19 anyway.

20 Q Mr. Klein, I am going to make these very short
21 questions. At the beginning of October 1967, that is
22 the perio I am talking about, have you got that in mind?

23 A Yes.

24 Q At that time the loan and security agreement,
25 Plaintiff's Exhibit 4 in evidence was in force and effect,

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1 jqbr 23 Klein-cross
2 wasn't it?
3 A I don't know.
4 Q Had it been terminated, to your knowledge?
5 A I don't know.
6 Q Didn't it give your company a three-year option
7 to buy 51 per cent of the stock of Time & Micro, do you
8 remember that?
9 MR. BRILL: These documents speak for themselves.
10 THE COURT: We don't necessarily have to be by
11 documents.
12 MR. BRILL: He is asking whether the document
13 provided by something.
14 MR. STREAM: I did not.
15 THE COURT: Overruled.
16 Q Did you remember, did you know that under that
17 Time & Micro loan agreement so-called your company had a
18 three-year option to buy 51 per cent of the company?
19 MR. BRILL: That is not what the document
20 provides and this is not a frivolous objection. If you
21 will give me one minute to look at the document I will
22 show you that the option does not provide that it extend
23 that long --
24 THE COURT: He is asking if he knows did it.
25 MR. STREAM: Paragraph 9 says for a period of three

jqbr 24 Klein-cross

years commencing this date Ajax shall have the option to purchase 51 per cent of the outstanding shares of Time & Micro, and this agreement was dated August 1966, August 18th. Do you remember that?

A Yes.

Q And did you in 1967, at the beginning of October to protect your investment, that is to say your guarantee position, offer to buy back the stock which you had the right to do under paragraph 9 of that loan agreement, Plaintiff's Exhibit 4 in evidence, did you?

A No.

Q Did you call up Mr. Kriser or Mr. Thaler at Industrial Plants and say or ask them whether they would buy the plant from you as they had offered to do in August of 1966, did you do that?

MR. BRILL: Objection, your Honor. These questions are totally irrelevant. There is no foundation that Ajax had any responsibility for this auction at this time or that Ajax had any responsibility to sell a plant which it didn't own.

THE COURT: I sustain the object in the present form.

Q Did you have any talk with Mr. Kriser in behalf of Time & Micro to offer to buy the plant, did you?

1 jqbr 25

Klein-cross

2 MR. BRILL: Same objection, your Honor, that
3 doesn't cure the defect in the question.

4 MR. STREAM: This goes to the question of mitigation.
5 This was a joint venture partner of Time & Micro and I
6 want to find out whether this gentleman didn't in behalf of
7 that company, Time & Micro, call up Mr. Kriser and
8 say "Okay now, would you like to buy the plant, it's intact
9 and in good shape." I want to find that out before he let
10 it go down the drain at an auction sale.

11 THE COURT: Please read the question as posed by
12 Mr. Stream.

13 (Question read.)

14 THE COURT: Sustained as to form.

15 Q At the beginning of October 1968 when this auction
16 sale of the Time & Micro facilities was impending did you
17 call up Industrial Plants in behalf of Time & Micro and ask
18 whether Industrial Plants would still give that repurchase
19 proposition to the company which had been offered to you
20 about a year before? Did you do that?

21 MR. BRILL: Objection, your Honor.

22 THE COURT: I have to sustain an objection
23 to that, yes. I don't see how that is pertinent.

24 Q Mr. Klein, what efforts, if any, did you make,
25 and by you I mean Ajax, in behalf of Time & Micro and in

jqbr 26

Klein-cross

behalf of your company as the guarantor of a debt of \$270,000, what effort did you make to arrange for an orderly transfer of the Time & Micro plant rather than its sale under the auctioneer's block?

MR. BRILL: Objection, your Honor, that is irrelevant also.

THE COURT: Sustained.

MR. BRILL: Thank you, your Honor.

Q The auction took place, didn't it?

A Yes.

Q Were you present at it?

A No.

Q At some point after the auction Ajax purchased this \$270,000 note which had been given by Time & Micro to the First Western Bank & Trust Company, isn't that so?

MR. BRILL: Objection, the question relates to events beyond the terms of Mr. Klein's employment with the plaintiff.

Q Would you be good enough to notice the endorsement on this corporate note of Time & Micro which is Plaintiff's Exhibit 12 in evidence and confirm to this jury that the note was endorsed over to Ajax Corporation?

THE COURT: If it is identified you may attempt to offer the paper but the question is not proper.

1 jqbr 27

Klein-cross

2 MR. STREAM: It is in evidence.

3 THE COURT: Then you don't need anything further.

4 MR. STREAM: The note in evidence, Plaintiffs
5 12, which is the Time & Micro note addressed to the First
6 Western Bank & Trust Company was endorsed as follows:

7 Pay to the order of Ajax Hardware Manufacturing
8 Corporation without recourse and signed by an officer of the
9 payee.

10 THE COURT: In other words, Mr. Stream, that
11 shows that Ajax secured the note made by Micro.

12 MR. STREAM: That is correct.

13 MR. BRILL: The only question is when this
14 occurred and it was after the period Mr. Klein left Ajax.

15 THE COURT: Isn't it dated, the assignment of the
16 note?

17 MR. STREAM: The endorsement is not indicated,
18 no, but that is important. As long as we have before the
19 jury --

20 MR. BRILL: It is dated.

21 THE COURT: Let me see it.

22 MR. STREAM: The endorsement is not dated.
23 Of course the note is dated, September 9, '66.

24 MR. BRILL: No, Mr. Stream.

25 MR. STREAM: You read whatyou like then.

jqbr 28

Klein-cross

THE COURT: Let me see it.

MR. BRILL: It is stamped on the front, your Honor.

THE COURT: Let me look it over.

The endorsement reads Pay to the Order of Ajax Hardware Manufacturing Corporation without recourse -- and I can't read some stamp here.

MR. BRILL: May I approach the bench?

THE COURT: No, you may not approach the bench. This is in evidence. Whether it is dated or not, I can't tell.

MR. STREAM: At the right time the jury will have the right to see it themselves. I will refer to that later on in summation.

THE COURT: I will bring down a lens which may aid in the examination of the paper.

Q My final two questions, Mr. Klein are these: One, do you know whether Ajax ever sued Time & Micro for what it claimed was its loss on this transaction?

MR. BRILL: Objection, totally irrelevant to this lawsuit. There is no claim in this lawsuit as to a failure of mitigation of damages and furthermore, your Honor well knows there is no obligation on plaintiff in this case to show who it might have sued

jqbr 29 Klein-cross

and who it might not have sued.

THE COURT: I think it is a relevant question but I don't know this witness can answer it. Do you know?

A No.

Q You don't know?

A I don't know.

Q You haven't the foggiest notion, right?

A I don't know.

Q Do you know whether Ajax ever brought a suit against Hirschmann Corporation, do you know that?

MR. BRILL: Your Honor --

THE COURT: Don't explain, just object. You don't have to make a sigh every time you make an objection.

MR. BRILL: I object.

THE COURT: Objection sustained.

MR. STREAM: I have no further questions.

THE COURT: Any redirect so-called?

MR. BRILL: Yes, your Honor.

THE COURT: Proceed with it and keep in mind what redirect means.

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1 jqbr 1 30 Klein-redirect

2 MR. BRILL: I will try to, your Honor.

3 REDIRECT EXAMINATION

4 BY MR. BRILL:

5 Q Mr. Klein, do you recall during your testimony
6 yesterday being asked by Mr. Stream whether or not you
7 testified in this action that you told Mr. Thaler on
8 August 12, 1966 that Ajax wanted to know if on a forced
9 sale there would be enough value to assure Ajax protection
10 on the advance or guarantee of approximately \$250,000 on the
11 Time & Micro machinery?

12 THE COURT: What is the question?

13 MR. BRILL: I am asking whether he recalls
14 being asked that question by Mr. Stream yesterday.

15 A Yes.

16 Q You recall Mr. Stream read to you from a portion
17 of your deposition dealing with the same conversation with Mr.
18 Thaler and asked you whether or not the portion that he read
19 was inconsistent with your testimony in this court, do you
20 recall that?

21 THE COURT: He read from page 9.

22 Q He read from page 4, question 15.

23 THE COURT: That was the first one.

24 Q I am asking you now, Mr. Klein, whether you also
25 recall testifying at the same deposition several questions

1 jqbr 2 31 Klein-redirect

2 later as follows: --

3 THE COURT: He already asked that and he said he
4 did.

5 MR. STREAM: I read it from beginning to end and
6 I object.

7 MR. BRILL: I don't believe he did.

8 MR. STREAM: I object to this.

9 THE COURT: Sustained. It's already been asked
10 by Mr. Stream with respect to the subsequent statement.

11 MR. BRILL: I am simply trying to rebut the infer-
12 ence --

13 THE COURT: Redirect means it doesn't have testi-
14 mony which was not gone into before. It doesn't mean a
15 rehearsal of past testimony.

16 MR. BRILL: Of course not, your Honor.

17 THE COURT: Sustained I said. Go on to the next
18 question.

19 Q I will pass to the next question, your Honor.
20 Mr. Klein, directing your attention to the same conversa-
21 tion with Mr. Thaler on August 12, 1966, you stated during
22 your testimony yesterday that you asked for the appraisal
23 "Right away" or words to that effect.

24 What, if anything, did Mr. Thaler say to you in
25 response to that request, Mr. Klein?

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1	jqbr 32	Klein-redirect
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2 A He told me that he had a prior engagement that
3 was in conflict. He would try to reschedule his other
4 engagement. I asked him how long it would take to make
5 the inspection and he told me one day.

6 Q Did Mr. Thaler say that the time allowed was
7 inadequate?

8 MR. STREAM: Objection, leading.

THE COURT: Sustained.

Q Mr. Klein, directing your further attention to your conversation with Mr. Thaler on August 16th on the telephone, you testified yesterday that you told Mr. Thaler during this conversation that you, Ajax, was waiting to get his appraisal in writing. Did you tell Mr. Thaler during that conversation what it is you expected to get in writing, what it was you expected to get in writing?

17 A A telegram confirming the --

18 THE COURT: That is not the question. Read the
19 question to the witness.

20 (Question read.)

21 THE COURT: Yes or no.

22 A Yes.

23 Q What did you tell him you expected to get in
24 writing, Mr. Klein?

25 A A telegram confirming the values that had been

jqbr 33 Klein-redirect

established for the machinery and equipment.

Q I direct your attention to the loan and security agreement dated August 18, 1966, Plaintiff's Exhibit 4 in evidence and this Telefax receipt of a Western Union telegram, Plaintiff's Exhibit 3 in evidence, and I ask you whether you have any recollecton at this time as to which of those documents, as to what the time relationship was between those two documents.

MR. STREAM: Objection to the form.

THE COURT: Sustained. There is no proof as to the date and I think he didn't know what date this paper --

MR. BRILL: That was not his testimony.

MR. STREAM: Yes, your Honor, it was. I object to these characterizations of his Honor's rulings. I think it is wrong.

MR. BRILL: Can I proceed with my redirect?

MR. STREAM: I ask this Court, I would like to ask the Court respectfully to direct both of us not to make comments. I standon the same principles.

THE COURT: I have done so and I repeat it. You make your objections and then I rule and that must be the end of it ordinarily at least. Frame your question again if you want to relate it to when each came. You are asking him to tell the relation in time.

jqbr 34 Klein-redirect

MR. BRILL: Let me approach this in a different way, if I may.

Q Mr. Klein, you testified yesterday that you did not remember meeting with Norman Louis on the day that the loan and security agreement was signed, is that correct?

A Yes.

Q Do you have any recollection as to whether you talked to Mr. Louis on the day the loan and security agreement was signed?

A Yes.

Q What is your recollection of that conversation?

THE COURT: Establish where it was, when it was and who was there.

Q How did this conversation occur, was it by telephone?

THE COURT: That is not the point at all.

Q Was it a telephone conversation or a personal meeting?

A A telephone conversation.

Q What was the substance of the conversation?

THE COURT: Who was talking?

Q Who were you talking to in the conversation?

A I talked to Norman Louis on the telephone.

Q What did you say to Mr. Louis on the phone?

jqbr 35

Klein-redirect

A I told him I had received a telegram from Industrial Plants which is Exhibit 3. I told him that the verbal figure that had been received on a telephone conversation were confirmed in this wire --

THE COURT: In this what?

THE WITNESS: In this telegram.

A (Continuing) -- and that he could then execute the loan and security agreement which was Exhibit 4.

THE COURT: You told him that he should execute it?

THE WITNESS: That he could, yes.

Q Do you know where Mr. Louis was during that telephone conversation?

A He was at his home.

Q Do you recall at this point today where the loan and security agreement was actually signed by Mr. Louis and Mr. Shriro on August 18th?

A It was signed in his home.

THE COURT: At whose home?

THE WITNESS: At the residence of Mr. Louis.

Q That was on August 18, 1966?

A Yes.

Q That was after you received the telegram and told Mr. Louis that you had received the telegram?

1 jqbr 36 Klein-redirect

2 A Yes.

3 THE COURT: Anything else?

4 MR. BRILL: I am looking for some of the exhibits,
5 your Honor.

6 Q Directing your further attention to Plaintiff's
7 Exhibit 4, the loan and security agreement, Mr. Klein,
8 I direct your attention to the last sentence in paragraph
9 No. 2 and ask you whether you were aware of this provision
10 stating as follows: "Said Schedule A referring to the
11 attachment which has been marked as Defendant Exhibit" --

12 THE COURT: When was he aware?

13 MR. BRILL: On or after August 18, 1966.
14 Between August 18, 1966 and September 1st, 1966 of this
15 provision stating that "Said Schedule A, which is
16 Defendant's Exhibit D for identification is subject to the
17 approval of Ajax which approval or disapproval will be
18 given within ten days from date and if not so given said
19 schedule will be deemed approved, were you aware of that
20 provision, Mr. Klein?

21 THE WITNESS: Yes.

22 Q Do you know if Schedule A was subsequently
23 disapproved?

24 A Yes. It was disapproved.

25 Q Approximately when did that occur, Mr. Klein?

1 jqbr 37 Klein-redirect

2 Do you know, do you remember?

3 A Sometime shortly after the 22nd of August, 1966.

4 Q Do you know if another schedule was substituted
5 for Schedule A to the loan and security agreement?

6 A Yes.

7 Q What was substituted for Schedule A, Mr. Klein?

8 THE COURT: The best evidence is the substitu-
9 tion, counselor.

10 MR. BRILL: I will mark as Plaintiff's Exhibit 26,
11 your Honor, for identification --

xx

12 (Plaintiff's Exhibit 26 was marked for
13 identification.)

14 Q Can you identify Plaintiff's Exhibit 26 for
15 identification, Mr. Klein?

16 A Yes.

17 Q Can you tell the Court and the jury what it is?

18 THE COURT: If he knows. That is of your own
19 knowledge.

20 A It is a letter of disapproval of Schedule A that
21 was attached to the security and loan agreement.

22 Q Is it signed by anyone?

23 A Signed by Norman Louis and it indicates --

24 MR. STREAM: No indications, it is in evidence.

25 THE COURT: Don't say what it is . Offer it if yo

1 jqbr 38 Klein-redirect

2 want to offer it.

3 MR. BRILL. I offer it in evidence, your Honor.

4 MR. STREAM: I object to this exhibit on two
5 grounds.

6 First of all, it is not binding upon the de-
7 fendant. It is a letter from one joint venture partner
8 to another, that is to say written by Ajax to Time &
9 Micro. It is a carbon copy which I don't stand on but more
10 important than that it refers to an enclosed document which
11 isn't a part of this document and standing alone it means
12 nothing.

13 MR. BRILL: May I respond to that, your Honor?
14 It is a signed original by both parties.

15 THE COURT: Let me see the paper before you
16 proceed.

17 Where is the enclosure, do you have that?

18 MR. BRILL: The enclosure is simply a copy of
19 the Industrial Plants appraisal. It is stated simply in the
20 letter.

21 THE COURT: You said where is the enclosure?

22 MR. BRILL: Your Honor, this is the original of
23 the enclosure. I don't have a copy of the enclosure.

24 MR. STREAM: There is no way of relating what
25 that letter says an enclosure to what counsel hands to this

1 jqbr 39 Klein-redirect

2 Court. That is an incomplete document. That enclosure could
3 be anything.

4 MR. BRILL: The letter itself states that it is
5 Industrial Plants' appraisal.

6 THE COURT: I have to sustain it at this time.
7 I don't see any enclosure. The objection is sustained at this
8 time.

9 Go on, please.

10 Q Mr. Klein, you were asked yesterday by Mr. Stream
11 what was your understanding of certain selected terms in the
12 Industrial Plants' appraisal reports and I would like to
13 ask you first of all what documents you look to to obtain
14 the information as to the value of the machinery and equip-
15 ment at the Time & Micro plant? What documents that is
16 supplied by the defendant Industrial Plants Corporation.

17 A I look to the letter of transmittal and explanation.

18 THE COURT: What exhibit?

19 THE WITNESS: Exhibit 5 and Exhibit 6, both of
20 them together.

21 THE COURT: When did you look at those papers?

22 THE WITNESS: I looked at them first on August
23 22, 1966.

24 Q As you looked at both of those documents together
25 not just to --

1 jgbr 40 Klein-redirect

2 MR. STREAM: Leading and objectionable.

3 THE COURT: Sustained.

4 Q You were asked yesterday how you understand the
5 term in-place value. Can I ask you today how you understand
6 the term fair market value as that term is used in Plaintiff's
7 Exhibit No. 6, I believe, which is the formal appraisal
8 list of fair market values.

9 A I looked at it as --

10 THE COURT: How you understand it.

11 Q How did you understand that term?

12 A I understand it to be the value of each separate
13 piece of machinery or some indicated by the dollar value
14 next to the description. I looked at that to be the value
15 that the company be bought or sold in the marketplace at.

16 Q I direct your attention to the last page of
17 Plaintiff's Exhibit 6, Mr. Klein.

18 THE COURT: Is it numbered?

19 MR. BRILL: Page 13, Mr. Klein, which states
20 additional for in-place value and gives total in-place
21 value of \$1,056,891 and gives total "fair market value of
22 \$919,085". Did you understand those terms and those values
23 to be separate?

24 A Yes.

25 Q Yesterday, Mr. Klein, you were asked on cross

jqbr 43 Klein-redirect
yes or no or related and nothing beyond that. This is
redirect.

MR. BRILL: I am not commenting. I am arguing.
Mr. Stream opened up yesterday in his questioning,
over my objection, your Honor. I objected that the documents
speak for themselves.

THE COURT: It is in now.

MR. BRILL: He opened up the whole area of how
Mr. Klein understood all of these documents and what sort of
protest Mr. Klein made and I am entitled to redirect and
to fill in the testimony. That is on that issue alone.

THE COURT: Let me have the question read again.
(Question read.)

THE COURT: Sustained. It is leading.

Q Directing your attention to your conversation on
August 28, 1966 with Mr. Thaler, you testified that you
told Mr. Thaler that the appraisal was not in complete
conformity with your instructions. Did you tell Mr. Thaler --

MR. STREAM: I will not permit him to ask him what
he told him. That is leading.

THE COURT: Sustained.

Q What did you tell Mr. Thaler in that conversation,
Mr. Klein?

A I told Mr. Thaler that I had never received a item-

1 jqbr 44 Klein-redirect

2 ized list of the liquidated value of the equipment,
3 each machine as I had received the fair market value.

4 The only thing I received from him was his total lumpsum --

5 THE COURT: Is this what you told him?

6 THE WITNESS: Yes, your Honor. I told him the only
7 thing I had received from him was his total lumpsum evaluation
8 and that I still expected to have an itemized list of the
9 liquidated value each by machine.

10 Q Was that a total lumpsum liquidation value, Mr.
11 Klein?

12 THE COURT: Don't lead him again. You don't know
13 what a leading question is apparently, sir.

14 MR. BRILL: I do.

15 THE COURT: Then heed the rule about it then.

16 Q What total lumpsum valuation had he given you,
17 Mr. Klein?

18 A Approximately \$500,000.

19 Q In that same conversation on August 28th with
20 Mr. Thaler there was discussion concerning a proposed guaran-
21 tee or proposed buy-out commitment by Industrial Plants
22 Corporation. You were questioned yesterday concerning your
23 letter of August 29th to Mr. Thaler --

24 THE COURT: Exhibit?

25 Q Exhibit No. 8 confirming our verbal agreement,

jqbr 45

Klein-redirect

Mr. Thaler, enclosed is a rough draft of the commitment letter. It goes on to state this letter is in line with your commitment made verbally to me during your report --

THE COURT: What is the question now supposedly on redirect? What is the question now? Get down to that.

Q You testified in court yesterday, Mr. Klein --

MR. STREAM: Again we are having an explanation.

THE COURT: Don't ask him what he testified in court yesterday.

MR. BRILL: I am asking him to amplify certain testimony.

MR. STREAM: I object to that kind of summarization.

THE COURT: State your question. You ought to frame it without referring to yesterday.

MR. BRILL: That is the purpose of redirect.

MR. STREAM: Are you teaching the Court now, counselor?

THE COURT: State your question, please.

Q When you stated in court yesterday that you picked the \$500,000 figure contained in Plaintiff's Exhibit 8 what did you mean you picked that figure?

1 jqbr 46 Klein-redirect

2 MR. STREAM: I object to what he meant. That is
3 a conclusion.

4 THE COURT: Sustained.

5 MR. BRILL: Your Honor --

6 MR. STREAM: No arguments. The Court directed
7 us not to argue.

8 Q How was that \$500,000 figure arrived at,
9 Mr. Klein?

10 MR. STREAM: It calls for a conclusion and the
11 working of his mind.

12 THE COURT: Sustained.

13 MR. BRILL: I object. Mr. Stream's entire question-
14 ing yesterday was based on Mr. Klein's understanding of these
15 documents.

16 THE COURT: I sustain the objection and I want no
17 more argument about it. There has to be an end. He
18 answered the questions yesterday.

19 Q The following day, Mr. Klein --

20 THE COURT: Following what?

21 Q On August 30, 1966 you had a conversation with Mr.
22 Kriser and did you discuss with Mr. Kriser --

23 MR. STREAM: I think --

24 THE COURT: Let him ask the question.

25 MR. STREAM: He had no discussions with Mr.

1 jqbr 47

Klein-redirect

2 Kriser.

3 MR. BRILL: That is entirely improper.

4 THE COURT: State your question, counselor.

5 MR. BRILL: That is exactly the comment your
6 Honor directed me not to make.

7 THE COURT: I still direct it to both of you and
8 the comment, another comment is made by you which is out
9 of place just as well. If you state your question,
10 please, I will listen.

11 Q Directing your attention to your conversation with
12 Mr. Kriser on August 30, 1966, Mr. Klein, and directing your
13 attention to the portion of that conversation wherein you
14 discussed a proposal by Mr. Kriser to guarantee a purchase
15 price of \$350,000 for the machinery and equipment in the
16 Time & Micro plant, can you please tell us what you said to
17 Mr. Kriser and what he said to you concerning that proposal
18 by Industrial Plants Corporation? The proposal I am
19 referring to is contained in Plaintiff's Exhibit 9,
20 I believe.

21 THE COURT: Answer, if you can.

22 A I told him that Ajax was seeking a standby
23 commitment to purchase the Time & Micro machinery equipment
24 in the amount of \$300,000. He said that is possible.

25 THE COURT: Nobody asked you to tell what somebody

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jqbr 48 Klein-redirect
else said.

Q What you said, Mr. Klein, and what he said back to you.

A Mr. Kriser said that industrial plants would grant a \$500,000 buy-back agreement, that there would be a standby fee of 5 per cent of the commitment amount and that if I did not need the full \$500,000 for protection on our loan guarantee, if I picked a lesser amount, the fee would be lesser and I then picked the amount of \$350,000 as an amount which Ajax was requesting of Industrial Plants for a stand-by commitment.

Q Was there any statements by either you or Mr. Kriser in this conversation concerning Industrial Plants' appraisal of the Time & Micro machinery equipment?

A Yes.

Q Will you relate the substance of that conversation.

A I talked --

THE COURT: What you said.

A I told Mr. Kriser that I had a concern over what I felt was ambiguity in some of the wording of the liquidated value portion of the proposal, of the appraisal. Mr. Kriser assured me --

THE COURT: Strike that.

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jgbr 49 Klein-redirect

A Mr. Kriser told me that I should have confidence in the proposal. He gave me the names of more than one banker to contact in New York for assurance of the quality of appraisals that had been done for them by Industrial Plants.

Q When Ajax signed the guarantee of the loan of \$270,000 to Time & Micro --

THE COURT: Exhibit 4 is it?

MR. BRILL: All these exhibits have been placed out of order here by Mr. Stream.

THE COURT: We don't have a clerk to handle those things. You will have to do it yourself.

MR. BRILL: Plaintiff's Exhibit 11, your Honor.

THE COURT: What is the question?

Q What information did Ajax have at that time supplied to Ajax by Industrial Plants Corporation concerning the liquidation value of the machinery and equipment in the Time & Micro plant?

A Ajax had the letter from Industrial Plants which is marked Exhibit 5. They had the inventory of machinery with appraisal values on it which is marked Exhibit 6. They had a telegram from Industrial Plants Corporation. I don't know what the exhibit is.

MR. BRILL: Exhibit 3, your Honor.

1 jqbr 50

Klein-redirect

2 A And Ajax also had the assurances --

3 THE COURT: Strike that.

4 Is that your answer?

5 Q Let me show you Plaintiff's Exhibits 9 and 10
6 and ask you if you had these two documents at that time?

7 A Yes.

8 THE COURT: 9 is dated August 30th and 10 is
9 dated August 30th.

10 Q Mr. Klein, could the Time & Micro plant have been
11 used, Mr. Klein, as it was in place for the manufacture of
12 those timing devices which was required for the fuse which
13 Ajax was then in the process of making a bid on a government
14 contract to produce?

15 MR. STREAM: Objection. It calls for a con-
16 clusion and it is hypothetcal.

17 THE COURT: Sustained.

18 Q Had you ever visited the Time & Micro plant ?

19 A Yes.

20 THE COURT: How many times?

21 Q Approximately how many times did you visit it?

22 THE COURT: I asked him a question. You don't
23 have to repeat it if I have already asked it. You stick
24 to your questions and I will stick to mine.

25 MR. BRILL: Very good, your Honor.

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1 jqbr 53 Klein-redirect
2 to another subject.

3 THE COURT: All right. He is going to.

4 Q Mr. Klein, we have heard mention of a "\$3 million
5 contract with the United States Government for the
6 manufacture of supply of certain fuses".

7 What did that \$3 million figure represent, Mr.
8 Klein?

9 MR. STREAM: That contract speaks for itself if it
10 were in evidence. It is not in evidence and counsel hasn't
11 got it here so he can't back into it.

12 THE COURT: Sustained. It represented money.

13 Q Mr. Klein --

14 MR. STREAM: I make an offer. I will consent
15 gladly if counsel offers that contract in evidence. I have
16 been waiting for it.

17 THE COURT: All right. There you are.

18 MR. BRILL: I am not going to offer that contract
19 in evidence. I simply want to ask Mr. Klein --

20 THE COURT: You asked him a question and I
21 sustained the objection. Go on to the next question. It is
22 about time we moved along here.

23 MR. BRILL: I am attempting to, your Honor.

24 THE COURT: I know you are attempting.

25 Q How much of a profit -- withdrawn.

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1 jqbr 54

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2 Over how long a period was this contract going
3 to run, Mr. Klein?

4 MR. STREAM: Objection, it is pure speculation.
5 The contract speaks for itself.

6 THE COURT: Sustained.

7 MR. BRILL: If the contract speaks for itself
8 I can't understand how we can have testimony as to the
9 \$3 million figure and I ask that be stricken from the re-
10 cord.

11 THE COURT: You don't have to if it is in.

12 MR. BRILL: If he is allowed to testify as to
13 that he is allowed to testify as to what that figure re-
14 presents.

15 THE COURT: I don't know why. It represents
16 payment for whatever was contracted for. The contract
17 indeed speaks for itself.

18 Q Without specifying what was contained in the
19 contract, Mr. Klein, can you tell us what the general pay-
20 ments under the contract were to cover?

21 MR. STREAM: I object. I again ask the Court to
22 direct him to move to another subject. If he doesn't want
23 to put the contract in evidence he can't back it in.

24 THE COURT: The objection is made to this question
25 and it is sustained.

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1 jqbr 56

Klein-redirect

2 any substantial part of fuses?

3 A Yes.

4 Q What capability was that, Mr. Klein?

5 A Ajax had the capability to manufacture fuse
6 bodies, the primer caps and most of the components
7 with the exception of the set back timing device.

8 Q Approximately how, in percentage terms, the
9 percentage of value, how much of a fuse does a timing
10 device represent?

11 A Some were between, in collar value, some were
12 between 10 and 15 per cent of the value of the fuse.

13 Q This is of the fuse that you were then bidding
14 to manufacture?

15 A Yes.

16 Q Did the timing device for that fuse which you
17 were then bidding to manufacture need to be made on
18 watch manufacturing equipment?

19 A No.

20 Q Could it have been manufactured on other types of
21 equipment?

22 MR. STREAM: Could is objectionable as hypo-
23 thetical.

24 THE COURT: Sustained in that form.

25 Q Was there other machinery, other than watch

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1 jqbr 60 Klein-redirect

2 MR. BRILL: Yes.

3 THE COURT: Denied.

4 Q Mr. Klein, did Ajax own the Time & Micro real
5 estate and plant building?

6 A No.

7 Q Do you know who owned the plant building and
8 real estate at Time & Micro in Strasburg, Pennsylvania?

9 THE COURT: At what time?

10 Q August 1966.

11 A I think --

12 THE COURT: Do you know?

13 A No, I don't know.

14 Q Did you know at that time?

15 A Possibly I did, yes.

16 Q Did you ever enter into an agreement with
17 Industrial Plants Corporation or any officer thereof wherein
18 you made any agreement to sell or offer to sell the entire
19 plant of Time & Micro consisting of the real estate
20 and plant building as well as the machinery and equipment?

21 THE COURT: I don't think there is any evidence
22 whatsoever of any request to appraise the land.

23 MR BRILL: But how can he --

24 THE COURT: Don't ask me questions. Ask the
25 witness questions.

1 jqbr 61

Klein-redirect

2

MR. BRILL: I am trying to explain how the question
3 is relevant.

4

THE COURT: Your explanation does not satisfy me
5 with respect to the relevancy of that question.

6

MR. BRILL: I am attempting to establish --

7

MR. STREAM: Don't tell the jury and the
8 Court.

9

MR. BRILL: If I can speak to you outside the
10 presence of the jury.

11

THE COURT: I won't take time off for that. Go
12 on to the next question.

13

MR. BRILL: I will terminate my redirect
14 examination

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jqbr 62 Klein-recross

RECROSS EXAMINATION

BY MR. STREAM:

Q Mr. Klein, when you told Mr. Brill on your redirect examination that you remembered now at this time, and not before, that you had had a telephone conversation with Mr. Louis on August 18th, what did you do to refresh your recollection since your testimony yesterday?

MR. BRILL: Objection. His testimony yesterday was only that he did not recall meeting with Mr. Louis, not that he did not recall having a telephone conversation with Mr. Louis. It was a narrow question yesterday.

THE COURT: I think that is correct although I can't check it without going back on the record and that is going to take too long. Reframe it.

MR. STREAM: I will withdraw the question.

Q Mr. Klein, in any event, do you remember having had that telephone conversation, just the two of you on the phone, right?

A With Mr. Klein talking to Louis?

Q Yo, Mr. Klein.

A Yes. I am trying to determine which --

Q You said just a few minutes ago you had a talk with Mr. Louis on the 18th of August and you said hurray, I got the telegram, or words to that effect, right?

jqbr 63

Klein-recross

1 A Yes.

2 Q You made no memo on that, did you?

3 A No.

4 Q Mr. Louis didn't live far from the plant,
5 did he?

6 A I don't know what you mean by far.

7 Q How far did he live from the plant?

8 A 35, 40 miles.

9 Q He came to the plant daily, didn't he?

10 A Yes.

11 Q Is it your testimony that this closing took
12 place in his home and that all the went over to his home,
13 the lawyers and the people from Time & Micro and the whole
14 gang went to his home to close, is that your testimony?

15 A I didn't say there was a gang, counselor.

16 Q Do you know who was there?

17 A There was --

18 Q Do you know?

19 A Yes, I do.

20 THE COURT: Were you there?

21 THE WITNESS: No.

22 Q How did you learn that?

23 A I know who signed it.

24 Q That is another story. The fact is you were not
25

jqbr 64 Klein-recross

there that day, isn't that so?

A That is right.

Q The fact is you never witnessed any signing that day, isn't that so?

A That is right.

Q The fact is you weren't present wherever that signing took place, were you?

A I --

Q Right?

A How can I answer that question yes or no?

Q You weren't present wherever that contract was signed, you weren't present, were you?

A No.

Q And the fact is that you have no way of demonstrating when Ajax received the telegram to which you refer, isn't that so?

MR. BRILL: Objection, it calls for a conclusion of the witness.

MR. STREAM: Establishing.

Q Have you, sir?

THE COURT: I will allow it. Answer the question.

MR. BRILL: He already stated how he established the receipt of the telegram.

MR. STREAM: You have no way of establishing

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by any time or date stamp when that telegram was received at Ajax, have you, yes or no?

THE WITNESS: The thermofax date is on there.

Q That is when it was received at Western Union. You have no way of establishing when you got it, have you?

A I accept the --

Q Have you got a way of knowing when you got it at Ajax?

A The time on the thermofax.

Q Was it delivered to you over the telephone?

A It comes --

Q Was it delivered over a telephone?

A No.

Q It came over a machine?

A Right.

Q Did you see it come over the machine?

A No.

Q Did you have a time stamp that showed when your machine at Ajax got the telegram that came into Los Angeles, and that?

A The time on the thermofax indicates --

Q Yes or no. I said your office, not Western Union, your office.

A There was not a handstamp on there.

1 jqbr 66 Klein-recross

2 Q Was there any kind of stamp on it?

3 A There is a time on there.

4 Q That is the time it got to Western Union, isn't
5 it?

6 A No, I won't accept that. I think it is the time
7 it got -- it is a simultaneous transmittal. It is an
8 electronic transfer.

9 Q You mean to tell me, sir, that that stamp on that
10 telegram --

11 MR. BRILL: The telegram speaks for itself.

12 THE COURT: That is not the point, counselor, at
13 all. Your objection, if this is an objection, is over-
14 ruled.

15 Q Have you got that telegram up there?

16 A No.

17 Q We will pass this up then in the interest of saving
18 time.

19 You told us just a few minutes ago that Ajax
20 had a capability of its own to manufacture part of the
21 requirements of the fuse contract, isn't that so?

22 A Yes.

23 Q And you indicated that so far as Time & Micro
24 was concerned, your partn-r in the deal, its involvement
25 was no more than 10 or 15 per cent of the total value

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jqbr 67

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of 3 million odd hundred thousands dollars, isn't that right?

A That is right.

Q But it was a critical component, wasn't it, the timing device, you told us that yesterday, didn't you?

A Yes.

Q Without that critical timing device you couldn't have gotten the contract, isn't that so, didn't you tell us that yesterday?

A That is part of the ufse. We had to furnish all of it, yes.

Q Now, sir, what percentage of that total job would have been reflected by Ajax's capability in manufacturing? Do you understand me?

A Yes.

Q Answer.

A Very little.

Q Give us a percentage. You gave us a percentage of Time & Micro, 10, 15 per cent.

A Maybe 20 per cent of the timing device.

Q You had a substantial interest in it yourself, didn't you, your company?

A I don't understand the question.

Q You and Ajax --

MR. BRILL: The question --

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1 jqbr 68

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2 THE COURT: He said he didn't understand it. Counsel
3 must be given a chance to reword the question. That is
4 common courtesy, that is all that is.

5 Q You told us that Time & Micro's contribution
6 to this fuse contract, this \$3 million fuse contract, would
7 have been 10, 15 per cent, right?

8 A Right.

9 Q And you indicated it was a critical component
10 without which you couldn't have gotten the contract, right?

11 A Yes.

12 Q And then you said that your contribution, meaning
13 Ajax, would have been roughly what percent, 20 per cent?

14 A You asked me what Ajax's contribution would be
15 of the timing device.

16 Q I am talking about the total fuse.

17 A Then I misunderstood.

18 Q Tell us the total contribution to this project
19 would have been -- not would have been, what was the
20 capability, to use your words of Ajax with respect to the
21 performance of this contract?

22 MR. BRILL: Objection.

23 THE COURT: Overruled.

24 Q Answer the question, please.

25 A Some where between 60 and 70 per cent without the

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1 jqbr 69 Klein-recross-redirect
2 support of any subcontractors.

3 MR. STREAM: That is all. Nothing further.

4 REDIRECT EXAMINATION

5 BY MR. BRILL:

6 Q Mr. Klein, do you know the reason why Mr.
7 Louis was at home on August 18th for the signing of the loan
8 and security agreement and not in the Ajax plant?

9 MR. STREAM: That would be hearsay.

10 THE COURT: Sustained.

11 Thank you.

12 (Witness excused.)

13 MR. BRILL: May we have a short recess, your
14 Honor?

15 THE COURT: Yes.

16 (Jury left the courtroom.)

17 (Recess.)
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jq/lf

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THE COURT: Call your next witness, Mr. Brill.

MR. BRILL: I would like to introduce into evidence two documents pursuant --

THE COURT: You want to introduce documents?

MR. BRILL: Pursuant to the pretrial stipulation, evidence from the last trial, your Honor.

MR. STREAM: I consent to the introduction of exhibit 22 -

MR. BRILL: That is not the right number.

Would the Court take note that both of these documents were marked at the last trial exhibits 22 and 23 respectively?

THE COURT: You don't have to mention that. You said you would take care of that necessity later.

(Plaintiff's Exhibit 27 marked for identification.)

(Plaintiff's Exhibit 28 marked for identification.)

THE COURT: All right.

MR. BRILL: I offer Exhibits 27 and 28.

MR. STREAM: I consent to the introduction of 27 I.D. in evidence. As the Court will see it represents a payoff of a loan. I object to the introduction of Plaintiff's Exhibit 28 I.D. despite the fact that I concede its authentic on the grounds that it's irrelevant, immaterial and unrelated to this case. It represents a purchase transaction, as the

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Court will notice.

THE COURT: Let me see it, please.

MR. BRILL: Your Honor, I withdraw 28 in order to expedite the trial.

THE COURT: 28 is withdrawn.

xxx (Plaintiff's Exhibit 27 received in evidence.)

THE COURT: This 27 apparently shows the payment of Ajax of a certain amount pursuant to, I believe, the guarantee.

MR. BRILL: I would like to call as Plaintiff's next witness Mr. George Sinclair.

G E O R G E S I N C L A I R, called as a witness by the Plaintiff, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRILL:

Q Mr. Sinclair, what is your present residence address?

A 1028 Lyndale Avenue, Bricksville Hill, Pennsylvania.

Q What is your present occupation?

A President of Keystone Appraisal Corporation.

Q Where is that located?

A 1235 Chestnut Street, Philadelphia, Pennsylvania.

Q What is the business of Keystone Appraisal Company?

1 A We are engaged and have been since 1908 in the
2 valuation of industrial and commercial properties.

3 Q How long have you been the president --

4 THE COURT: That is personal property or real
5 estate?
6

7 THE WITNESS: Both real estate and personal property.

8 Q How long have you been president of Keystone
9 Appraisal Company, Mr. Sinclair?

10 A Since 1968.

11 Q Can you tell the Court and the jury what your
12 educational background is?

13 THE COURT: Just briefly.

14 A I attended after graduating from high school in
15 1942, I was in the Navy for four years. After that I
16 attended Drexel Evening College for seven years and have been
17 actively engaged in the appraisal business since 1950.

18 THE COURT: Did you receive some collegiate degree?

19 THE WITNESS: No, sir, I did not.

20 Q What training do you have as an appraiser, Mr.
21 Sinclair?

22 A I have taken appraisal courses as given by the
23 American Institute of Real Estate Appraisers and by the
24 Society of Residential Appraisers.

25 Q Are you currently an instructor in any courses in

2 appraisal practice or methodology?

3 A I teach the only course in evaluation --

4 THE COURT: What do you teach whether it's the
5 only course or not.

6 A I teach the course of evaluation and equipment
7 sponsored by the American Society of Appraisers.

8 Q Where is this course given?

9 A It's given at various colleges throughout the
10 country.

11 THE COURT: Where do you teach?

12 THE WITNESS: At any college that has it.

13 Q What are some of the colleges where you taught
14 this course?

15 A The Warton School University of Pennsylvania,
16 University of Michigan, University of Connecticut, Virginia
17 Commonwealth University, Menlo Park College, which is part of
18 Stamford in California, and I just recently completed one
19 in Puerto Rico sponsored by the Government of Puerto Rico.

20 THE COURT: Are these limited terms of certain
21 periods?

22 THE WITNESS: Yes, generally five to six days.

23 Q Do you have a specialty within the appraisal
24 profession, Mr. Sinclair?

25 A Machinery and equipment, valuation of machinery and

1
2 equipment.

3 Q Are you a member of any professional appraisal
4 organizations?

5 A Yes, I hold a senior membership in the American
6 Society of Appraisers. I hold a designation M.A.I. which
7 is a member of the American Institute of Real Estate Appraisers.

8 THE COURT: Let's confine this to what it involves
9 and that is that. I believe both sides will concede that
10 it refers to the appraisal of certain machinery.

11 MR. BRILL: Yes, your Honor.

12 THE COURT: Anything else is more or less irrelevant
13 in his experiences.

14 Q Are any of these organizations concerned with
15 machinery and equipment appraisers, Mr. Sinclair?

16 A Only the American Society of Appraisers.

17 Q Are you an officer of that organization?

18 A I am now serving as past international president.
19 I was the international president for the year July, '74,
20 through July, '75.

21 Q As immediate past international president, do you
22 currently sit on the board of governors of that organization?

23 A Yes, I do.

24 Q What is the American Society of Appraisers and
25 who may belong to it?

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2 A The American Society of Appraisers --

3 THE COURT: Does it refer solely to appraisers
4 of machinery?

5 THE WITNESS: No, sir.

6 THE COURT: I think it makes no difference, counsel.
7 Pass on to something else

8 Q Do you know whether a Mr. Jesse Thaler is a member
9 of the American Society of Appraisers, Mr. Sinclair?

10 A To the best of my knowledge, yes, sir.

11 THE COURT: That is, he is a member?

12 THE WITNESS: To the best of my knowledge he
13 is, sir.

14 Q Or at one time was a member? Whether he is
15 currently or at one time was a member?

16 A To the best of my knowledge he was a member.

17 Q Has the American Society of Appraisers adopted
18 any principles of appraisal practice and/or code of ethics?

19 A Yes, they have adopted both a code of ethics and
20 principles of appraisal.

21 MR. BRILL: I ask that this document be marked.

xxx 22 (Plaintiff's Exhibit 29 marked for identification.)

23 Q Can you identify Plaintiff's Exhibit --

24 MR. STREAM: Housekeeping. Since 28 is withdrawn,
25 isn't 28 the next number?

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MR. BRILL: I withdrew 28.

I would like to maintain a record of 28.

THE COURT: Then make this 29. It's a small matter.

All right, go ahead.

Q Can you identify Plaintiff's Exhibit 29 for identification, Mr. Sinclair?

A Yes, sir.

Q What is that document?

A It's a copy of the principles of appraisal practice and the code of ethics of the American Society of Appraisers.

Q When was it adopted?

A February 2, 1964.

Q Were those standards and principles in effect during the year 1966?

A Yes, sir.

MR. BRILL: I offer plaintiff's Exhibit 29 into evidence, your Honor.

MR. STREAM: May I have a quick voir dire on that?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. STREAM:

Q Mr. Sinclair, does every appraiser have to be a

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2 member of this society that you have mentioned?

3 A I don't think I heard the first part of the question.

4 Q Does every appraiser in the country have to be a
5 member of that society?

6 A Have to be?

7 Q Yes.

8 A Yes.

9 MR. BRILL: This is not relevant, your Honor.

10 THE COURT: I will take it.

11 Q Is every appraiser or are the principles which
12 were just marked as an exhibit for identification principles
13 which were promulgated under the laws of the State of New
14 York or the Commonwealth of Pennsylvania or under any
15 regulatory body of either of those state governments? Yes
16 or no.

17 A No, sir.

18 Q Are the appraisers who are not members of the
19 society obligated by law to observe those principles in
20 any way?

21 A That are not members?

22 Q Yes.

23 A No, sir.

24 MR. STREAM: I object to that on the grounds it
25 has no bearing on this case.

MR. BRILL: Oh, your Honor --

THE COURT: Don't say that.

MR. BRILL: This question was thoroughly briefed in plaintiff's trial brief submitted at the first trial --

THE COURT: I will reserve decision at the present time. Proceed.

Are you offering the entire document or parts of it?

MR. BRILL: The entire document.

THE COURT: Decision reserved.

MR. BRILL: I would direct your Honor's attention to the portions of plaintiff's trial brief which deals with the admissibility of this document and which counsel for the defendant has had for well over eight or nine months.

MR. STREAM: I don't think I ever saw it but that is irrelevant.

MR. BRILL: Maybe somebody else in your office.

THE COURT: It seems to me, counselor, that you at least ought to indicate which particular sections of this you wish to be considered by this jury.

MR. BRILL: I will, your Honor.

MR. STREAM: I can help counsel if it's of any assistance to counsel. I don't mind if he asks the witness

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1 based upon his expertise whether this or that is best, good
2 or bad practice but I don't think that this jury ought to
3 be confronted with somebody's principles which aren't of
4 the force and effect of law and regulation.
5

6 THE COURT: I am going to say this, Mr. Brill:
7 these matters contained in this paper are not binding.
8 They are not determinative. They may possibly some of them
9 be considered and that is the extent of it. That is in
10 general what Mr. Stream has stated.

11 MR. BRILL: I agree that they would be admissible
12 not as a binding document on the defendant but only as
13 evidence relevant to what the standard of care of the defen-
14 dant would be.

15 THE COURT: I don't think that is completely
16 defined a statement. Are you contending that this defendant
17 is bound by these?

18 MR. BRILL: No.

19 THE COURT: Are you contending that this defendant
20 must comply with each and every one of these propositions?

21 MR. BRILL: Mr. Thaler is a member of this organiza-
22 tion and we are claiming that the standards of this organiza-
23 tion for professional practice apply to Mr. Thaler and that
24 these are the standards which he should have followed and
25 we will direct the jury's attention --

1 THE COURT: I am not going to charge that, counselor.
2 I still insist that you designate which portions of these
3 before I pass on it and I am reserving now. Go ahead.

4 MR. BRILL: I suggest we continue any argument
5 on the subject out of the presence of the jury if necessary.

6 THE COURT: I am not going to ask for any further
7 argument, counselor, so that solves that question.

8 BY MR. BRILL:

9 Q Mr. Sinclair, does Plaintiff's Exhibit 29 for
10 identification represent the actual professional practices
11 of appraisers of machinery equipment in the year 1966?

12 MR. STREAM: I object to any questions addressed
13 to a document not in evidence and particularly where the
14 Court reserved decision.

15 THE COURT: Sustained at this point.

16 Q May I direct your attention to particular portions
17 of this document and ask you concerning those portions.

18 THE COURT: You haven't indicated which parts they
19 are.

20 Q I direct your attention to Section 3.1.

21 THE COURT: Do you have another copy so I can
22 follow this?

23 MR. BRILL: I believe you should have one from
24 the last trial, your Honor.

2 THE COURT: I don't care where it comes from if
3 it's the same document.

4 Q Would you read Section 3.1 to the jury, Mr. Sin-
5 clair?

6 MR. STREAM: Objection. It's not in evidence and
7 it will not be in evidence until the Court reaches a con-
8 clusion.

9 MR. BRILL: I suggest we recess and solve this
10 matter.

11 THE COURT: I won't adopt your suggestion. I can't
12 do that. That would be improper. If you want to wait and
13 have him come back tomorrow I will specify.

14 MR. BRILL: I think if we are going to have examina-
15 tion of Mr. Sinclair that it has to be on the basis of this
16 document and I would then cite you the cases which support
17 the admissibility into evidence of this document as
18 relevant documentary evidence of the standard of professional
19 care which applies to the defendant. It's not necessary
20 that it be a statutory law or any sort --

21 THE COURT: And it's not, therefore, anything which
22 is binding upon the defendant.

23 MR. STREAM: All I can say is that there is no way
24 I can cross examine a book of principles. I can cross examine
25 this man. If he starts talking about a book I am not able

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to cross examine a book.

MR. BRILL: The cases are clear and unanimous on this point. Citing --

MR. STREAM: I don't want any citing to the jury.

THE COURT: I don't want any more argument.

MR. BRILL: You are misunderstanding the purpose --

THE COURT: I don't misunderstand the purpose at all, counselor. You can withdraw him and ask him to come tomorrow. I am not going to be forced to decide any questions in five minutes or less notice. Don't argue any more.

MR. BRILL: It's highly prejudicial for your Honor to state that this is a five-minute decision when it was introduced at the first trial.

THE COURT: I am not bound even by what I did in the first trial of this action so get away from that one.

MR. STREAM: Will your Honor be good enough please, I implore the Court, to direct counsel to stop referring to the first trial and what he thinks the law should be.

THE COURT: Don't refer to the first trial and that is firm. You should not refer to it as to what I did in the first trial or what happened there.

Do you understand that? I want to be certain.

MR. BRILL: Your Honor --

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1 Jq/lf
2 THE COURT: Do you understand it, please, yes or
3 no? I am sorry but I have to insist.

4 MR. BRILL: I am forced to make references to
5 something which happened in the first trial --

6 THE COURT: You are not forced to do any such
7 thing.

8 MR. BRILL: If it has to be without the presence of
9 the jury --

10 MR. STREAM: I won't permit him to do this. I
11 ask you to hold him in contempt. I think this is shocking
12 when counsel is told to be quiet, you be quiet.

13 THE COURT: I am not going to get into this contempt
14 field. I am telling you and I have told you and I don't
15 want any more discussion of it. You finish up with this
16 witness or wait until tomorrow until I pass upon your offer.
17 Take a choice, counselor.

18 MR. BRILL: When do you intend to pass upon the
19 offer, your Honor?

20 THE COURT: By tomorrow morning.

21 MR. BRILL: I only have one question before that
22 decision. If we are finished with Mr. Sinclair on direct
23 and cross examination and your Honor rules it's admissible
24 will it be introduced into evidence without cross examination
25 of Mr. Sinclair?

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2 THE COURT: Any questioning by you or -

3 MR. BRILL: Or Mr. Stream.

4 THE COURT: I can't determine that. It depends
5 on what the questions are.

6 MR. BRILL: I will proceed with Mr. Sinclair this
7 afternoon reserving the right to call him tomorrow morning.

8 THE COURT: I don't know what you are going to
9 ask him but go ahead if you think you can do something which
10 doesn't relate to the paper.

11 MR. BRILL: Yes, I do, your Honor.

12 THE COURT: What is it?

13 BY MR. BRILL:

14 Q Mr. Sinclair, apart from Plaintiff's Exhibit 29
15 for identification, are you familiar with the procedures
16 orderly and customarily followed by professional appraisers
17 of machinery and equipment?

18 A Yes, I am.

19 Q What is the basis of your familiarity?

20 A It is part of the course that we teach in the
21 valuation.

22 THE COURT: Course of what?

23 THE WITNESS: Part of the course taught.

24 THE COURT: He didn't ask you that.

25 Q What is the basis of your familiarity with these

2 procedures?

3 THE COURT: Can you answer that?

4 A My experience, my knowledge of what other appraisers
5 do and what I teach to appraisers.6 THE COURT: I don't think what you teach makes any
7 difference.8 Q Would you be good enough to tell the jury what is
9 the function of a professional appraiser of machinery and
10 equipment?11 A An appraiser of machinery and equipment is called
12 upon to place a value upon either a given piece of machinery
13 and equipment or upon an entire industrial plant.14 Q And under the professional standards and principles
15 with which you are familiar, what is the first thing which
16 a professional appraiser of machinery and equipment must do
17 upon being approached by a prospective client to appraise
18 certain machinery and equipment?19 THE COURT: That gets into your initial arrangement.
20 Is there an objection?

21 MR. STREAM: Yes.

22 THE COURT: Sustained at this time.

23 MR. BRILL: I didn't hear the first comment.

24 That gets into what? You said that gets into something.

25 THE COURT: It depends upon the arrangement between

2 the customer, so to speak, and the appraisal unit.

3 MR. BRILL: That is what I am asking him, your
4 Honor.

5 THE COURT: No, it isn't.

6 Q Mr. Sinclair, if a prospective client walks into
7 your office or the office of any professional appraiser of
8 machinery and equipment, what is the first thing that an
9 appraiser must determine before proceeding with his assign-
10 ment to appraise any machinery and equipment?

11 A He first of all must determine what value is
12 being sought and what purpose the appraisal is to serve.

13 Q What different types of value or purpose might
14 there be in an appraisal of machinery and equipment?

15 THE COURT: Purposes?

16 MR. BRILL: Purposes or values.

17 THE COURT: There might be many purposes.

18 Q Would you name a few such purposes, Mr. Sinclair.

19 A A client might wish to have an appraisal for
20 insurance purposes and then he would be looking for an
21 insurable value. He might be looking to sell his entire
22 plant as an operating facility. He would then be looking
23 for market value in place of that equipment as part of an
24 operating unit. The purpose might be to sell the entire
25 plant for off-site use, someone is going to move it to another

2 facility. Then he would be looking for market value for
3 off-site use. He might be looking to have a liquidation
4 sale. He is going to sell off some piece of equipment or
5 maybe he is going out of business and he is going to sell
6 all of his equipment. He would then be looking for a liquida-
7 tion value and he would have to clarify whether it's to be
8 a liquidation under orderly sale conditions or whether it's
9 to be a sale under forced conditions.

10 Q If a professional appraiser, Mr. Sinclair, is
11 told by his client that the purpose of the appraisal is
12 to determine whether certain machinery and equipment would
13 provide adequate security for a loan, what type of value
14 would the appraiser be concerned with?

15 A Normally he would be concerned with liquidation
16 value.

17 Q I ask you to examine Plaintiff's Exhibits numbers
18 5 and 6 in evidence in this case and tell us whether you
19 see any specification of that type of value, that is liquida-
20 tion value contained in those two exhibits?

21 MR. STREAM: I object to the form of the question.
22 One at a time.

23 THE COURT: Yes, one at a time. Sustained.

24 MR. STREAM: Address your question to one at a
25 time.

1 Q Directing your attention first to Plaintiff's
2
3 Exhibit 5, I am asking you to examine that exhibit and tell
4 us whether you see anything in that exhibit which represents
5 to him a liquidation value in professional appraisal terms?

6 MR. STREAM: Objection. This is an appraisal expert
7 and not a grammar teacher or an English teacher. The ques-
8 tion doesn't elicit from this witness information relative
9 to his specialty.

10 THE COURT: Sustained. The letter speaks for
11 itself.

12 Q Mr. Sinclair, in professional appraisal terms,
13 would you tell us what the following sentence means to you:
14 it is difficult to project the market values of used
15 machinery for the next two years. However, it is incon-
16 ceivable that the value would be less than 60 percent of
17 the appraised figures that we have established.

18 MR. STREAM: I make the same objection.

19 THE COURT: Same ruling, counselor.

20 If you want to ask him about 6, if you are going
21 to, you may.

22 Q Mr. Sinclair, I direct your attention to Plaintiff's
23 Exhibit 6 and the list of machinery which is contained in
24 that exhibit.

25 THE COURT: Are you familiar with that exhibit?

2 THE WITNESS: Yes, sir.

3 THE COURT: Have you read it before?

4 THE WITNESS: I have seen it before, your Honor.

5 THE COURT: Have you examined it before?

6 THE WITNESS: Yes, sir, at the previous trial,
7 your Honor.

8 MR. STREAM: I ask the Court to instruct the
9 witness to make no reference about any other trial.

10 THE COURT: That is right. You already were
11 informed about that and you are not to take any significance
12 whatsoever from such a reference.

13 Would you tell us how the procedures customarily
14 followed by professional appraisers in 1966 would be applied
15 to make an appraisal of the machinery and equipment listed
16 in Exhibit 6 after the appraiser has determined the client's
17 purpose?

18 A The equipment would be identified by its make,
19 model, by serial number, by the capacity or the speed at
20 which it would operate. A notation would be made as to the
21 general condition of the item and an appropriate value would
22 be placed against each and every item of equipment.

23 Q Would you detail for us in some manner the steps
24 which an appraiser would follow in making an appraisal of
25 that machinery and equipment under the procedures customarily

2 followed by professional appraisers in 1966?

3 A Once the determination of value has been established
4 you know what type of value you are looking for and the
5 purpose of the appraisal, then making the physical inventory
6 or listing of the equipment a personal inspection is made
7 of each piece of equipment and from that the appraiser then
8 takes down what we call his field notes.

9 THE COURT: His what?

10 THE WITNESS: His field notes in which he describes
11 the equipment, one lathe, by its make, its model, its
12 serial number and any other pertinent information he can
13 get on it from its capacity, size, the type of material
14 it turns out, what is the general appearance of the item,
15 is it generally in good operating condition or is it an
16 obsolete piece of equipment, is it in poor physical condi-
17 tion, that type of information is all noted during the personal
18 inspection.

19 Q After making this inspection, what further steps
20 would an appraiser take to complete his appraisal?

21 THE COURT: If any.

22 I don't understand that question.

23 MR. STREAM: Objection to the question.

24 Q Are there any steps which an appraiser is required
25 to take under the standard procedures customarily followed

2 in 1966 following the actual physical inspection of the
3 equipment?

4 MR. STREAM: I object to the form of the question.

5 THE COURT: Sustained as to form.

6 MR. STREAM: Particularly to the use of the word
7 "required."

8 THE COURT: Sustained.

9 Q Mr. Sinclair, under the standards of professional
10 appraisal practice which were in effect in 1966 --

11 MR. STREAM: I object to the form of the question.
12 Counsel is referring to the document --

13 MR. BRILL: No.

14 MR. STREAM: May I suggest that counsel rephrase
15 his question so that he talks in terms of this
16 witness' opinion. There are no objective standards.

17 MR. BRILL: Mr. Sinclair already testified --

18 MR. STREAM: I don't want to get into a debate
19 with you.

20 MR. BRILL: You are misstating the testimony.

21 THE COURT: Reframe the question. It calls for
22 an opinion, in the first place, and that is all it is.

23 MR. BRILL: I believe Mr. Sinclair --

24 THE COURT: I sustained the objection to the form.
25 Please reframe it.

2 Mr. Sinclair, were there in 1966 standard principles
3 of professional appraisal practice apart from those as con-
4 tained in this document, Plaintiff's Exhibit 29?

5 MR. STREAM: I object to the form. It calls for
6 an objective evaluation and we are talking only about this
7 witness' opinions. When he asks the witness to state whether
8 there are standards he is talking about some objective
9 which is unrelated to this witness. I suggest that counsel
10 be instructed to talk only about this witness.

11 THE COURT: I am sustaining the objection as to
12 form. If you will cure it, fine.

13 MR. STREAM: If he gets this witness' opinion I
14 will listen to it. No objective opinions from space some-
15 where.

16 MR. BRILL: I ask that the Court --

17 THE COURT: I have ruled.

18 MR. BRILL: I am asking something else.

19 THE COURT: No, you are not. Do you want to change
20 your question? If so, do so. State what it is.

21 MR. BRILL: I find it difficult to proceed -

22 THE COURT: I am not concerned with your difficulties.
23 I have a few myself here.

24 MR. BRILL: At this time I request that Mr. Sin-
25 clair be declared by the Court as an expert on the profession

of the appraisal of machinery and equipment and I make my request -

THE COURT: That leads only to one area and that is opinions, if I am not mistaken.

MR. BRILL: Yes, your Honor.

THE COURT: Then conform to that. An expert testifies under certain conditions in his opinion.

Mr. Sinclair, in your opinion, were there in 1966 recognized standards of professional appraisal of machinery and equipment?

MR. STREAM: Same objection.

MR. BRILL: I am asking for his opinion.

MR. STREAM: Same objection. I am going to make a suggestion. That is that counsel ask the witness whether certain stated facts which he can give by way of a hypothetical question are in his opinion acceptable practices in the appraisal field and if he does it that way I will sit here and listen. But he cannot go off into the field of theory. That is what bothers me.

THE COURT: I think that in general is correct, counselor.

MR. BRILL: Your Honor --

THE COURT: You are attempting, whether it's directly or indirectly, to have him state what standards

1 were in effect.

2 MR. BRILL: I am attempting --

3 THE COURT: That is not the question. That is not
4 the real fundamental question.

5 MR. BRILL: The question is what was the standard
6 of care that applied to the defendant.

7 THE COURT: Not on some general basis.

8 MR. STREAM: The question is what in this man's
9 opinion should have been done and that is all, this man.

10 MR. BRILL: That is not the question.

11 THE COURT: I am going to sustain that objection.
12 You follow it or not. You can like it or not like it.

13 MR. BRILL: What was your ruling on my request
14 that Mr. Sinclair be declared an expert witness?

15 THE COURT: I said yes on that if you recall but
16 that gives rise only to opinions and it requires an opinion
17 as to something specific, not an opinion as to what some
18 general rule might be about doing this or doing that.

19 Q In your opinion, Mr. Sinclair, what would a pro-
20 fessional appraiser of machinery and equipment in 1966 do
21 after inspecting the machinery and equipment which was to be
22 appraised?

23 A He would have checked with the manufacturer of
24 that equipment for a number of points. First he would have
25

2 checked to see what the cost of that machinery was, that
3 they knew. In the course of doing this he would have found
4 out whether the machine was a current model. Very often
5 in the appraisal machinery equipment model X is no longer
6 made, they make model Y, they change model numbers quite
7 readily. He would have found out if the model did change
8 what was the reason for it. Is the new model able to do
9 more production work than the old model, is it a better
10 machine? Does it have a greater speed? This deals with the
11 functional utility of the machine that you are appraising.

12 He would also have looked into the economics of
13 the industry.

14 THE COURT: The market you mean, professor,
15 is that what you mean?

16 THE WITNESS: I mean what was the condition of the
17 industry in general, was it --

18 THE COURT: What about the industry? Is it the
19 market or what?

20 THE WITNESS: That is what I am trying to explain,
21 your Honor.

22 THE COURT: I wish you would, what you mean by
23 the economics.

24 MR. BRILL: I will rephrase the question.

25 Q Assume an appraiser is making an appraisal of

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2 watch manufacturing machinery --

3 THE COURT: That is beside the point. This isn't
4 watch manufacturing machinery, is it?

5 MR. BRILL: In this case, your Honor?

6 THE COURT: It might be close to it, some of
7 the factories.

8 MR. STREAM: I don't care.

9 MR. BRILL: I think we will connect this up.

10 THE COURT: Go ahead. What about it then?

11 Q In your opinion, what inquiry would the professional
12 appraiser make into the market or economic conditions of an
13 industry?

14 A He would have checked into the industry to see
15 whether that industry is functioning, whether it's an
16 industry that is producing a product that can be sold or
17 whether it's affected by inputs or whether it's affected
18 by a change in consumer demand. Is there a demand for the
19 product that this machinery produces? If the machinery is
20 producing a product that cannot be sold or has very limited
21 sales potential this affects it.

22 THE COURT: That is what I was trying to ask you,
23 professor.

24 Q What relationship then does the market conditions
25 or the economic conditions in that industry have to the value

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of machinery which is used in that industry?

A It's a form of obsolescence or depreciation which is called economic depreciation.

Q What do you mean by economic depreciation?

MR. STREAM: He just answered it for you.

THE COURT: I think he answered it. Sustained.

Q In considering the factor of economic obsolescence, Mr. Sinclair, in your opinion, what factors, what inquiries would a professional appraiser have made in 1966 to determine that factor of economic obsolescence?

A There are a number of trade journals for various industries. There are manuals which are kept on the industry, trade associations in Washington, D.C., public information showing what the trend is within any given industry, this type of information would have to be researched.

THE COURT: It's now fifteen minutes of one, I believe, and we will recess until two o'clock. Please continue as you have to heed my instructions.

MR. BRILL: After the jury leaves I request two minutes with the Court.

THE COURT: I reserved and I didn't say I was going to do it on the lunch hour. I will do it as I said.

MR. BRILL: I want to raise another matter.

THE COURT: All right, I will sit here and listen.

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(Jury left the courtroom)

THE COURT: I am not going to extend this lunch period anyway.

MR. BRILL: I will start my two minutes when Mr. Stream is done.

MR. STREAM: If counsel is going to address himself to that old issue I am going to ask the Court to tell him to stop.

THE COURT: I shall. I told you I would decide this thing and I will decide it by tomorrow morning but I am not going to have to decide it in the noon hour.

MR. BRILL: I appreciate that.

THE COURT: What is it you want to tell me?

MR. BRILL: If Mr. Stream hadn't interrupted me before I began I would have been finished by now.

MR. STREAM: You sound just like Mr. Gartner in that querulous manner. Raise up and stand up in front of the Court.

MR. BRILL: This is ridiculous.

On October 2, 1975, at a pretrial conference before this Court Mr. Stream stated to the Court and to me that he would raise no objections to any exhibit which was admitted during the first trial.

MR. STREAM: As to authenticity.

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1 MR. BRILL: He did not limit it to authenticity.
2
3 He is raising objections to these exhibits.

4 THE COURT: Let me see the record. Was that before
5 me?

6 MR. STREAM: I don't know, your Honor. I would
7 hate to have to interpret that into giving counsel latitude
8 to put that into evidence. I put it to him in that connection
9 that he need not bring anybody from California to authenticate
10 documents. I concede their authenticity but that doesn't
11 mean relevancy and he took the same position with respect
12 to the documents on payment and he stood here this morning
13 and he screamed about relevance and the Court overruled
14 his objection. I am raising the same issue.

15 MR. BRILL: I made no objection to any documents
16 introduced at the first trial, Mr. Stream.

17 THE COURT: Keep quiet, will you, so I can read
18 this.

19 Yes, on page 5 of the record Mr. Stream said, "I
20 propose to raise no objections to any exhibit which was
21 admitted during the first trial so that it will not be
22 necessary for him to call anybody from California to authenticate
23 these documents." And I said, "Let me be certain about this.
24 Will you object to any of Mr. Stream's exhibits from the
25 first trial?"

2 "No, your Honor, I don't think there will be any
3 trouble." That is you.

4 "I have a list of three or four exhibits which I
5 propose to substitute the originals which were available.
6 I make them available now, one of which I think is a different
7 version of one of the exhibits. I would like to show it
8 now so there is no difficulty at the trial."

9 I don't see any statement by Mr. Stream that he
10 would make no objections other than the question of authenticity.
11 I have to take his statement, not yours.

12 MR. STREAM: May I go to lunch now, your Honor?

13 THE COURT: Yes.

14 (Luncheon Recess)
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George Levett
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AFTERNOON SESSION

2:00 p.m.

(In open court - jury present)

G E O R G E S I N C L A I R, resumed.

THE COURT: In order to permit this witness to finish his testimony today, I hope, and get back to his home over the noon hour after some deliberation and consideration I determined the question involved. This document, Exhibit 29 for identification, is entitled "The Principles of Appraisal Practice and Code of Ethics of the American Society of Appraisers."

The portions sought to be admitted have been marked at least in the commencement of the section by a red check mark, Mr. Brill.

MR. BRILL: Yes, your Honor.

THE COURT: I admit this exhibit with the portions marked. However, it is not to be deemed by you as anything which is binding upon the defendant in this particular case. It is, in effect, an opinion by a society with respect to appraisals. You must also bear in mind that this particular appraisal made in this case is not general and that in this case it must be determined basically upon the arrangements made between the plaintiff and the defendant. This document so admitted or the portions thereof admitted is not law

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1 and is not legally binding upon the defendant. You are
2 required to apply the principles of law in accordance
3 with the charge which the Court will ultimately give you.
4 So be it.

5
6 MR. BRILL: Thank you, your Honor. May I have
7 the exhibit at this time?

8 THE COURT: Yes.

9 (Plaintiff's Exhibit 29 received in evidence.)

10 DIRECT EXAMINATION (continued)

11 BY MR. BRILL:

12 Q Mr. Sinclair, I call your attention to Plaintiff's
13 Exhibit 29, particularly to the portions marked in red on
14 the left margin and I ask you if you would simply read
15 those portions to the jury.

16 THE COURT: Are you going to read all of this?

17 MR. BRILL: Just the ones marked, your Honor.

18 THE COURT: That is quite a lengthy process. You
19 may read it if you want to read it. I don't think it's
20 necessary to have the witness read it.

21 MR. BRILL: I won't read everything.

22 THE COURT: There is no requirement that you read
23 everything. However, if there is anything you leave out
24 that Mr. Stream wants to read he, of course, has a privilege
25 to read it.

2 Proceed. Let's get through with this thing.

3 (At this point Mr. Brill read certain portions
4 of Plaintiff's Exhibit 29 in evidence to the jury.)

5 THE COURT: Proceed with any further direct questions
6 of this witness.

7 MR. BRILL: Yes, your Honor.

8 I just need one minute to get my exhibits out.

9 THE COURT: Get them out and get them ready, if
10 you have to have them with this witness.

11 MR. BRILL: I seem to have misplaced an exhibit,
12 your Honor.

13 THE COURT: That's frequently done.

14 MR. BRILL: I apologize, they were on the witness
15 stand over the recess apparently.

16 THE COURT: They were there during the recess.
17 They didn't pop up there during the recess.

18 MR. BRILL: I apologize, your Honor.

19 THE COURT: Go ahead.

20 Q Mr. Sinclair, I direct your attention to Plaintiff's
21 Exhibits 5 and 6 which you have before you, the formal list
22 of machinery and values supplied --

23 THE COURT: That is 6 you are asking him about.

24 Q Yes, number 6 is the formal list of machinery
25 and value supplied by the defendant and number 5 the accompanying

1 letter and I call your attention to Plaintiff's Exhibit
2 29 particularly to section 8.2.

3 THE COURT: Ask him a question. You don't have
4 to call his attention to anything.

5 Q I ask you whether there is anything in Plaintiff's
6 Exhibits 5 or 6 which complies with Section 8.2 of the
7 standards and principles of appraisal practice of the
8 American Society of Appraisers.

9 MR. STREAM: I object to that. Your Honor instructed
10 him that this appraisal is not to be used as evidence against
11 this defendant. An effort is being made again to take a
12 clause in that document and make it a Bible that binds my
13 client. I can't cross examine in that Bible.

14 MR. BRILL: It's not that it's not evidence.

15 MR. STREAM: Let me finish. I don't object to
16 counsel asking the witness whether in his opinion the
17 appraisal which my client did conformed to sound and accepted
18 appraisal practices and that is what I think he should be
19 doing.

20 THE COURT: Sustained.

21 Q Would you examine again Plaintiff's Exhibits 5 and
22 6 and tell us whether in your opinion --

23 THE COURT: 6 is the appraisal, isn't it? Why do
24 you talk about 5?
25

2 MR. BRILL: 5 and 6 are the appraisal.

3 MR. STREAM: That is a characterization for the
4 jury and not you. I object to the form of the question
5 and ask that you use one document at a time and call it a
6 letter and call it an inventory but don't call it something
7 that it ain't.

8 MR. BRILL: That is for the jury to decide what
9 is and what isn't.

10 THE COURT: I sustain the objection.

11 Q Start with Plaintiff's Exhibit 5, Mr. Sinclair,
12 the letter dated August 19, 1966, signed by Mr. Jesse Thaler
13 with the seal of the defendant and I ask you whether in your
14 opinion that letter conforms to the ^{ordinary}~~order~~, customary
15 standards of professional appraisal practice with respect
16 to a statement of the objectives and the purposes of the
17 appraisal inspection.

18 A No, sir, it does not.

19 THE COURT: Let me see it.

20 Go ahead.

21 C Directing your attention to the same letter,
22 Mr. Sinclair, after the Court has finished with it, I ask
23 you whether in your opinion there is anything in that
24 letter which conforms to the accepted and customary standards
25 of professional appraisal practice with respect to a definition

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2 of the meaning attached to the values which are submitted
3 by the appraiser.

4 A No, sir, it does not.

5 Q Directing your attention to the same letter,
6 is there anything in that letter which conforms to the
7 accepted principles of standard appraisal practice with
8 respect to a statement of any limiting conditions which the
9 appraisal may be subjected to or subject to?

10 A No, sir.

11 Q Finally, directing your attention to that same
12 letter, do you find anything in that letter which conforms
13 to the accepted principles of professional appraisal practice
14 with respect to a description and an explanation of the
15 method by which the appraisal was performed?

16 A No, sir.

17 Q Mr. Sinclair, I direct your attention to Plaintiff's
18 Exhibit 6, I believe, that is the formal inventory list of
19 machinery and equipment with the values next to each item,
20 and tell us whether there is -- rather than going through
21 the questions one by one again --

22 THE COURT: You better go one by one.

23 Q Do you find anything in Plaintiff's Exhibit 6,
24 Mr. Sinclair, which conforms to the standard principles of
25 appraisal with respect to a statement of the purpose for which

2 the appraisal was performed?

3 A No, sir.

4 Q Do you find anything within that same exhibit
5 which conforms to the standard principles of professional
6 appraisal practice with respect to a statement of the defini-
7 tion of values which are supplied by the appraiser?

8 MR. STREAM: Counsel is again slipping into that
9 objective test. I object to the form of the question.
10 I ask counsel be instructed to ask whether in his opinion the
11 exhibit, et cetera.

12 THE COURT: Sustained.

13 MR. BRILL: Mr. Stream, I am attempting to show --

14 THE COURT: I sustained his objection. You are
15 not to say anything to him about it. I made the decision.
16 You are not going to argue that way and I told you that
17 several times. Now I ruled and you go ahead on the basis
18 of my ruling.

19 MR. BRILL: I am attempting to. I would wish that
20 you instruct Mr. Stream not to make comments after you have
21 ruled.

22 THE COURT: He objected.

23 Q In your opinion, is there anything in Plaintiff's
24 Exhibit 6 before you which conforms to the order and customary
25 appraisal practice with respect to a definition of the meanings

2 attached to the values supplied?

3 MR. STREAM: Same objection.

4 THE COURT: Overruled.

5 MR. BRILL: Thank you, your Honor.

6 THE COURT: Unexpectedly when you get something,
7 just go ahead.

8 Q Answer the question, please.

9 A No, sir, there is not.

10 Q Is there anything within Plaintiff's Exhibit 6,
11 Mr. Sinclair, which in your opinion conforms to the customary
12 and accepted principles of appraisal practice with respect
13 to a statement of limiting conditions of the appraisal?

14 A No, sir.

15 THE COURT: Anything else on this?

16 MR. BRILL: Not on that, your Honor, no.

17 THE COURT: What is next then?

18 Q Incidentally, Mr. Sinclair, when you have given
19 us your opinion as to whether or not certain practices may
20 or may not be in conformance with the custom and standards
21 of professional appraisal practice, does your opinion relate
22 to the year 1966 as well as to today?

23 A Yes, sir, it does.

24 Q And that would apply to all the testimony which
25 you are giving today concerning those practices?

2 A Yes, sir.

3 Q Mr. Sinclair, I ask you to assume that in the
4 year 1966 there was a very limited market in the United
5 States for precision watches manufactured in the United
6 States because of the fact that the cost of manufacturing
7 these watches was too high to compete with imported watches
8 of the same type and I ask you whether that condition would
9 affect the value of watchmaking --

10 THE COURT: In your opinion.

11 Q Whether in your opinion that condition would
12 affect the ^{value} ~~making~~ of watchmaking machinery in the United
13 States?

14 A Yes, sir, my research so indicated.

15 Q For what reason?

16 A This is part of the economics that I discussed
17 before lunch. If my research indicated that the watchmaking
18 industry as such was adversely affected by ^{imports} ~~inputs~~ or anything
19 that would cut down the amount of production in this country
20 it would then affect the machinery and equipment.

21 THE COURT: Did you assume that these import
22 regulations, whatever they may have been, were to be permanent?
23 Did you?

24 THE WITNESS: No, sir.

25 THE COURT: What did you assume?

1 Jq/lf

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2 THE WITNESS: I said if my investigation indicated --

3 THE COURT: You don't answer my question, sir.

4 MR. BRILL: I am not sure I understand your question.

5 MR. STREAM: That is not important. It's the way
6 the witness understood it.

7 THE COURT: Did you understand my question?

8 THE WITNESS: No, sir.

9 THE COURT: I am asking you what did you assume
10 as to any import situations, did you assume them to be
11 permanent or merely temporary?

12 MR. BRILL: If I may make an objection to your
13 question, he was answering a question based on my own assump-
14 tions. I think that is where the confusion lies.

15 THE COURT: I don't know where the confusion lies
16 but I am going to ask that question and I am going to over-
17 rule your objection to my question. I may ask questions
18 once in awhile.

19 THE WITNESS: If your assumption was --

20 THE COURT: I didn't assume anything. I am asking
21 you what you assumed.

22 THE WITNESS: If my assumption was that the ban
23 or the effect of the import was limited that would be one
24 thing. If my assumption was that it was a permanent, that
25 would be another thing.

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THE COURT: Then there would be a difference.

THE WITNESS: Yes, sir.

THE COURT: You didn't take one or the other routes.

THE WITNESS: No, sir.

THE COURT: A'll right. Go ahead, counsel. I don't know what you are waiting for.

Q Mr. Sinclair, I ask you now to assume the following state of facts: assume that a client gives to an appraiser a two-year old appraisal report of certain machinery and equipment and tells the appraiser that the old report is to be used solely as an inventory guide. Assume that the appraiser is requested by the client to appraise that same machinery and equipment and I ask you whether in your opinion it would comply with customary appraisal practice in 1966 for the appraiser to rely on the values established in the prior appraisal report as a major basis in producing his own appraisal without independent verification by the appraiser of his results?

A No, sir, it would not.

Q I ask you, Mr. Sinclair, under the same set of assumed facts whether in your opinion it would conform to customary appraisal practice for the appraiser to make his report without making any mention of his reliance in making

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his appraisal on the prior report which was done two years earlier?

A No, sir.

THE COURT: Did you assume in this question that he relied upon this paper? Did you assume that?

THE WITNESS: Yes, sir.

THE COURT: And if he hadn't relied on it, your answer would be different, is that right?

THE WITNESS: As I understand the question, your Honor --

MR. STREAM: I ask that what the witness started to say be stricken and that he be directed to answer the Court's question.

(Question read)

THE WITNESS: Yes.

Q Mr. Sinclair, in your opinion, would it conform to customary standards of appraisal practice --

THE COURT: What opinion?

Q In your own opinion, Mr. Sinclair --

THE COURT: I don't know what "it" is. "It" is indefinite, counselor.

MR. BRILL: I will rephrase the question.

THE COURT: You are obliged to it.

Q Mr. Sinclair, assume the following, that an appraiser

1 bases his appraisal report and the values given in his
2 appraisal report partly or largely on opinions and information
3 as to the purported values of machinery and equipment which
4 he obtains from an employee of the client. In your
5 opinion, can an appraiser give as his own valuation the
6 values so given to him by that employee in conformance with
7 the order and customary standards of appraisal practice?
8

9 THE COURT: I don't know that there are any facts
10 to sustain that hypothesis.

11 MR. STREAM: Objection to the form.

12 THE COURT: Sustained.

13 MR. BRILL: Subject to connection, your Honor.

14 THE COURT: You can't connect it tomorrow.

15 MR. BRILL: We will connect up this through the
16 deposition of the defendant's own appraiser, Mr. Thaler.
17 Under the rules of evidence it may be admitted subject to
18 connection as indeed all the documents which Mr. Stream
19 offered were admitted subject to connection, your Honor.
20 I think the same rules should apply to the plaintiff as applied
21 to the defendant.

22 THE COURT: I ask the reporter to read your question
23 as you gave it.

24 MR. STREAM: I don't mind if he answers the question.

25 THE COURT: All right, answer the question as stated.

A-1411

2 (Question read)

3 A No, it would not be in accordance with sound
4 appraisal practice.

5 Q In your opinion, Mr. Sinclair, would it conform
6 to customary appraisal practice if an appraiser is to make an
7 appraisal without checking the current manufacturer's price
8 for the machinery and equipment which he is appraising?

9 A No, sir.

10 Q Would it conform with customary professional
11 appraisal practice for an appraiser to appraise machinery
12 and equipment without making any inquiries into the economic
13 conditions of the industry in which the machinery and equip-
14 ment is used?

15 A That is a must, it must be analyzed.

16 Q If the machinery and equipment to be appraised
17 is specialized machinery and equipment with which the
18 appraiser does not have special acquaintance, would it be
19 consistent with customary appraisal practice for the
20 appraiser to give an appraisal of that machinery without
21 making any inquiries at all?

22 A No, sir, the most --

23 THE COURT: No, sir, is the answer. Strike out the
24 rest.

25 Q Mr. Sinclair, I believe you testified earlier that --

2 MR. STREAM: I don't want that.

3 THE COURT: Don't repeat previous statements,
4 counsel, or testimony.

5 Q Mr. Sinclair, in your opinion does it conform or
6 would it conform with customary standards of professional
7 appraisal practice for an appraiser to give an appraisal
8 report without defining the type of appraisal value that he
9 is giving to the client?

10 A No, sir, it would not.

11 Q In your opinion, Mr. Sinclair, what is the harm
12 or wrong --

13 THE COURT: What is the what?

14 Q What is the harm which could be caused by failing
15 to define those appraisal values?

16 MR. STREAM: That is speculative and hypothetical.

17 THE COURT: Sustained.

18 Q In your opinion, what is the purpose of the require-
19 ment that the definition of the appraisal value be given?

20 MR. STREAM: Objection.

21 THE COURT: Sustained.

22 Q Mr. Sinclair, in your opinion, whose responsibility
23 is it to choose the proper type of value which will be given
24 to a client once the appraiser is told the client's purpose
25 in obtaining the appraisal?

2 THE COURT: I don't understand that question.

3 MR. STREAM: I object to the form.

4 THE COURT: Sustained as to form.

5 Q Mr. Sinclair, assume the following facts: that
6 an appraiser is told by his client what the purpose of the
7 appraisal is. In your opinion, is it the appraiser's
8 obligation or someone else's obligation to choose the proper
9 type of appraisal value?

10 A It is the appraiser's responsibility.

11 Q Mr. Sinclair, I believe you still have in front
12 of you Plaintiff's Exhibit 5.

13 A Yes, sir.

14 Q A letter dated August 19, 1966, from Industrial
15 Plants Corporation to Ajax Hardware Manufacturing Corporation,
16 and I call your attention to the following statement con-
17 tained herein: "As stated in our telegram dated August 17,
18 1966, the plant equipment is in excellent condition. The
19 machinery contained therein is mostly of Swiss manufacture
20 and it is not available to American manufacturers unless they
21 are members of the trust and even then the delivery of this
22 type of machinery ranges between two and three years from
23 the date of order."

24 That paragraph, Mr. Sinclair.

25 In your opinion, does it conform with accepted and

2 customary appraisal standards to make such a statement in
3 a letter such as that if the appraiser has made no inquiry
4 at all as to whether or not the machinery was available or
5 as to whether or not the trust was even in existence?

6 A No, sir.

7 Q I call your attention to the statement in the
8 same letter, Mr. Sinclair, that "In our opinion manufacturers
9 utilizing most modern high precision equipment of this nature
10 would pay important premiums over and above the values as
11 established in our appraisal if this equipment were made avail-
12 able to them," this paragraph on the bottom of the first page.

13 A Yes, sir.

14 Q In your opinion, would it be in accordance with
15 customary standards of appraisal practice for an appraiser
16 to make such a statement in a letter like that if the
17 appraiser had made no inquiry at all as to whether any
18 manufacturer would be willing to pay important premiums
19 over the prices which he stated in his report?

20 A No, sir, there would be no basis for it then.

21 Q Finally, Mr. Sinclair, and this is my last question,
22 your Honor, I ask you to assume that an appraiser was told
23 that the purpose of an appraisal is to determine whether
24 certain machinery and equipment would be sufficient as
25 collateral for a loan and I ask you to examine Plaintiff's

A-1415

Exhibits number 5 and number 6 and tell us whether either one or both of those exhibits would conform with the accepted principles of professional appraisal practice in providing a professional appraisal in response to that request.

A I see nothing in Exhibit 5 that would so indicate and Exhibit 6 is an inventory only. My answer would have to be no.

THE COURT: Are we through with this witness on direct?

MR. BRILL: Yes, your Honor.

THE COURT: All right. Cross examination then. Suppose we take a short recess.

(Jury left the courtroom)

(Recess)

THE COURT: You may proceed with your cross, Mr. Stream.

CROSS EXAMINATION

BY MR. STREAM:

Q Mr. Sinclair, you used the words a few minutes ago, the word "must," something was a "must." What was it that was a "must"?

A I believe that it was an assumption that was asked of me, before I valued a certain item if the industry that that was in was adversely affected by something outside

A-1416

2 of it, I said yes, if that was -- you must analyze the
3 industry in order to be able to project market value of
4 a piece of equipment.

5 Q Wouldn't it be more suitable for you to say that
6 in your opinion sound practices called for that, isn't that
7 what you really mean, rather than "must"?

8 A I don't know how anyone can value machines -

9 Q That is not my question. I don't ask you to tell
10 me what anyone else does. All I ask you is to tell me
11 whether you don't agree that what you labeled as a "must"
12 was really something which represented your opinion of sound
13 appraisal practice, isn't that so?

14 A My opinion is what has to be done.

15 Q And no more than that, right? Is the "must"
16 recorded in some commandment or law or regulation?

17 A No, sir.

18 Q Have you, yourself, ever bought or sold machinery?

19 A No, sir.

20 C Have you ever dealt as a broker in the purchase
21 or sale of machinery?

22 A Not as individual pieces of equipment. I have
23 represented total plant facilities as appraiser.

24 C I didn't ask you that. Have you ever dealt as
25 a broker in the purchase or sale of machinery or equipment?

1
2 A No, sir.

3 Q Have you ever managed a plant which used precision
4 machinery and equipment?

5 A No, sir.

6 Q So that your experience, sir, and I don't say as
7 a criticism but just to clear the air, your experience as
8 an appraiser is purely theoretically oriented, isn't that
9 so?

10 A No, sir, I wouldn't say that.

11 Q By the way, this American Society of Appraisers
12 to which you referred during your testimony, that isn't a
13 government sponsored organization, is it?

14 A No, sir, it is not.

15 Q It's a private membership club or association,
16 isn't that right?

17 A It's a society of professional appraisers.

18 Q But you have to pay a due or a fee to get into it,
19 right?

20 A You pay dues.

21 Q And many appraisal companies, I dare say, aren't
22 members, isn't that so?

23 A I didn't quite get that.

24 Q Aren't there appraisal companies which are not
25 members of this American Society?

MR. BRILL: Objection, your Honor. There is no testimony that any companies belonged to this society, only that individuals belong.

Q Let's find out.

THE COURT: I will allow the question.

Q Can companies become members?

A No, sir.

Q Only individuals?

A Yes.

Q Isn't it so that there are a good number, if not a vast number of people who are working as appraisers in this country who haven't become members of your society?

A Yes, sir.

Q Is their standing diminished in any way because they are not members of your society?

A I believe so.

Q You do?

A Yes.

Q Is their appraisal less valid because they are not members of your society?

A An appraisal --

THE COURT: Just answer the question. Don't make a speech about it.

THE WITNESS: I can't answer yes or no.

2 Q Then tell me you can't.

3 A I can't answer that yes or no.

4 Q Is it your testimony that unless you are a
5 member of this private society or club or association, what-
6 ever you want to call it, that the individuals who are not
7 cannot render appraisals that are valid and available to
8 clients?

9 A No, sir.

10 Q They can, can't they?

11 A Yes, sir, they can.

12 Q But the fact of the matter is that Mr. Jesse
13 Thaler was not only a member, he was a senior member of
14 your society.

15 A To the best of my knowledge, yes, sir.

16 Q You are familiar with Industrial Plants Corporation,
17 aren't you?

18 A I know of them, yes, sir.

19 Q And you acknowledge, don't you, that it has a good
20 reputation?

21 A Yes, sir.

22 Q What?

23 A Yes, sir, it does.

24 Q You are also familiar with a company called Hirsch-
25 mann Company, right?

2 A Yes, sir.

3 Q Hirschmann Corporation?

4 A Yes, sir.

5 Q And you know that for many years they imported
6 from Switzerland pieces of precision instruments, machinery,
7 and sold them in this country, isn't that right?

8 A I knew them all as machinery dealers rather than
9 specifically an imported item.

10 Q You knew they were dealing with machinery and
11 high precision machinery at that time which was imported from
12 Switzerland, is that right?

13 A Yes, sir.

14 Q I dare say that before you testified today you
15 reviewed the report and the transmittal letter of Hirschmann
16 Corporation, the transmittal letter is dated July 1, 1964,
17 and was marked Plaintiff's Exhibit 1-A in evidence. Let me
18 show it to you. I hand 1-A to you.

19 You have seen that, haven't you?

20 A Not since the last trial.

21 Q I asked you not to refer to last trials, first
22 trials or any trials.

23 A No, sir. I have seen it before.

24 A You saw it before, didn't you?

25 THE COURT: Disregard the reference. Answer the ques-

2 tion.

3 A Would you repeat the question, please?

4 Q Have you seen that before today?

5 A Sometime ago.

6 Q And haven't you also, sometime ago, seen the
7 accompanying or underlying appraisal report of Hirschmann
8 Corporation which I hand you now and which has been marked
9 Plaintiff's Exhibit 1?

10 THE COURT: You have seen that before?

11 THE WITNESS: Sometime ago.

12 Q And you read it too, didn't you?

13 A I did not.

14 Q You didn't read it?

15 A No, sir.

16 Q What did you do with it?

17 A I can't answer that because you won't let me answer
18 it.

19 THE COURT: Don't say that.

20 C Have you ever seen those reports outside of a
21 courtroom?

22 A No, sir.

23 Q Now look at them. Let me ask you some questions
24 about the first of the two which is to say the letter,
25 Plaintiff's Exhibit 1-A. In that letter, Mr. Sinclair,

2 you will see on the first page there is a paragraph that
3 says -- and by the way this letter is signed by Mr. Kaefer,
4 Martin H. Kaefer. Did you know him?

5 A No, sir, I did not.

6 Q Did you ever hear of him?

7 A No, sir.

8 Q In this letter which he wrote in July, 1964, he
9 said, "We believe to the best of our judgment that we of the
10 Hirschmann Corporation, being agents and national distributors
11 for Swiss and German high precision tools are well qualified
12 to make appraisals of this type."

13 Can you dispute that fact?

14 MR. BRILL: Objection, irrelevant.

15 THE COURT: Overruled.

16 A No, sir.

17 Q Can you?

18 A No, sir.

19 Q Mr. Kaefer, in behalf of Hirschmann, "We have vast
20 experience in this connection and are frequently called upon
21 to make appraisals on trade-ins and to counsel insurance
22 companies with reference to appraisals of equipment of the
23 type in question."

24 Can you dispute that statement of fact?

25 A No, sir.

1 Q Have you ever in your life appraised high precision
2
3 instruments at a plant?

4 A Individual equipment, yes, sir.

5 Q As a plant.

6 MR. BRILL: Objection, your Honor. The question is
7 not clear.

8 THE COURT: I don't know why the objection.

9 MR. STREAM: I don't either but I will restate the
10 question.

11 Q Have you ever in your life appraised watchmaking
12 equipment, yes or no.

13 A No, sir.

14 Q That is the kind of equipment as to which these
15 hypothetical questions put to you by counsel for the plain-
16 tiff were concerned, isn't that so?

17 A As I understand --

18 Q Isn't that so? Didn't counsel ask you questions
19 hypothetical in nature that dealt with high precision equip-
20 ment at a watchmaking plant?

21 A No, sir, he asked me questions on procedure and
22 that is what I attempted to answer. Appraisal procedure.

23 Q In respect of a watchmaking facility?

24 A On procedure only.

25 Q In other words, your answer to his questions or

2 your answers were purely hypothetical answers to his hypo-
3 thetical questions, is that so?

4 A No, sir, they were answers based upon standard
5 appraisal procedure and practice.

6 Q But they were hypothetical in the sense that they
7 dealt with the narrow question of an appraisal, a piece of
8 paper, unrelated to the reality of the plant itself,
9 isn't that so?

10 MR. BRILL: Objection, your Honor, in that the
11 question is unspecific. It relates in a broad stroke
12 to all questions which he was asked rather than focusing
13 in on each particular question. Some dealt with plants,
14 some dealt with procedures in general.

15 THE COURT: I will sustain an objection as to
16 form.

17 Q Mr. Sinclair, have you ever in your life appraised
18 a high precision watchmaking equipment plant containing such
19 equipment purchased and transported from Switzerland,
20 in-plant, in-place, ready for operation?

21 A As a total plant, no, sir.

22 Q Putting aside for the moment, Mr. Sinclair, your
23 opinions concerning the form of the appraisal that was
24 rendered by Industrial Plants and that, sir, was what your
25 testimony was addressed to, right, the form of that appraisal?

A-1425

1 A I thought it was addressed to the procedure.

2 Q The procedures underlying the preparation of the
3 formal report, that is what you testified to, right?

4 A Yes.

5 Q Not the dollars and cents in the appraisal.

6 A No, sir.

7 Q That you didn't talk about at all, right?

8 A No, sir.

9 Q We will get to that later, okay?

10 I want you to consider, sir, at this time whether
11 you could agree or disagree with the statement made by
12 Mr. Kaefer that the particular plant we are talking about,
13 which is the high precision instrument plant of Time & Micro
14 in Strasburg, Pennsylvania, in August, 1966, Mr. Kaefer's
15 statement that that plant was, to quote him in the same letter,
16 Plaintiff's Exhibit 1-A, "was indeed remarkable in that the
17 company had accumulated such a complete line of watchmaking
18 machines of such high caliber." Can you dispute that as a
19 fact?
20

21 MR. BRILL: Objection. Irrelevant. Mr. Sinclair
22 has not testified as to the facts of the defendant's
23 appraisal let alone an appraisal two years prior to that.

24 THE COURT: Overruled.

25 Q Can you?

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2 A I don't see that.

3 C The third paragraph from the bottom and I will
4 read it again, "It is indeed remarkable that this company
5 called at the time Precision Time Corporation, has accumulated
6 such a complete line of watchmaking machines and of such
7 high caliber." Can you dispute that as a fact?

8 A I still haven't found it.

9 Q Can you dispute it as a fact whether you see it
10 or not?

11 A No, sir, not based upon your reading.

12 C Do you regard it as significant, sir, in determining
13 the overall value of a plant in-place, ready for operation,
14 that the plant contains high quality, quality control for
15 machinery, is that relevant?

16 A It contains high quality --

17 Q Quality control for machinery. Do you understand
18 that?

19 A No, I don't. Quality control procedures are you
20 talking about?

21 Q Yes, sir, for machines. Is that relevant?

22 A Yes, sir, it would be relevant.

23 Q You understand what I am talking about is machinery
24 meant to keep the machinery itself in a high state of opera-
25 bility, do you understand that?

2 A Yes, sir. That is relevant, yes, sir.

3 Q That is a fact, not some theoretical opinion,
4 isn't it? That is an important fact?

5 A Yes, like everything else we have discussed are
6 facts.

7 Q You mean everything you have talked about was a
8 fact including the fact that the appraisal report that you
9 looked at didn't have listed in it, as you put it, the
10 serial number of the unit? You described that as a failure
11 on the part of the appraiser in question, didn't you?
12 Did you mention that as one of the oversights?

13 A Yes, sir, I did.

14 Q You said because the appraisal didn't have the
15 serial numbers that in your opinion that appraisal was badly
16 prepared, right?

17 A I did not say that.

18 Q You said it didn't conform to sound and accepted
19 appraisal principles?

20 A I did not.

21 Q Did it?

22 A I wasn't asked that question.

23 Q I am asking you now. Is it the fact, sir, that
24 an appraisal doesn't by way of example set forth the serial
25 numbers of the component units of the plant and equipment

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2 being appraised, does that omission, in your opinion, repre-
3 sent a variance from sound and accepted appraisal practices?

4 A Yes, it does.

5 Q Is it a serious omission, sir?

6 A No, it's a lack of professionalism.

7 Q But does it in any way negate the validity of
8 the figures themselves in the report?

9 A Not necessarily.

10 Q And how about the statement of general condition?
11 I think you testified that it didn't conform to sound and
12 accepted appraisal practices for the appraisal of Industrial
13 Plants to have neglected to set forth the general condition of
14 each item next to the item, isn't that what you said?

15 A This Hirschmann report does say that, sir.

16 MR. STREAM: I move to strike that answer out.

17 THE COURT: Strike it out.

18 Q Did you hear my question?

19 A Yes, sir, I did.

20 Q What did I ask you?

21 A You asked me about a report that does not have --

22 THE COURT: Read the question.

23 (Question read)

24 A Yes, sir, that is what I said.

25 Q That was a deficiency, right?

A-1429

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Jq/lf

Sinclair-Cross

403

A Yes, sir.

Q Does it necessarily affect the validity of the dollar figures in that report?

A Not necessarily.

Q Does it mean the figures are wrong?

A It doesn't mean they are right, no, sir.

Q Does it mean they are wrong?

A No, sir.

Q But a good appraiser puts that next to each item?

A Either next to each item or he makes a general statement in the beginning such as the Hirschmann report did.

Q I didn't understand that. I thought you meant each machine had to have a statement of condition.

A That is one way of doing it.

Q Isn't that the best way?

A Not necessarily.

Q You don't think it's the best way to do it to show each machine's condition so that the person who reads the report knows which machines are in excellent condition, which ones are in fair condition and which ones are in bad condition? You don't think that is better than simply saying in some kind of covering note some of the machines are good and some are bad?

A-1430

2 A That is not what I said.

3 THE COURT: What is the answer?

4 A If the machines vary, yes, but if all the
5 machines were in basically the same condition, if they were
6 all in good condition, then a paragraph such as the Hirschmann
7 has, generally the equipment is well kept, clean and in good
8 condition is sufficient if that applies to them all. If
9 some are in good condition and some fair, then it should be
10 spelled out.

11 Q One way or the other should be shown?

12 A Yes, sir.

13 Q You are sure of that?

14 A Yes, sir.

15 Q And didn't you also say that the appraiser should
16 check to see whether the machines are current models or
17 obsolete, didn't you say that?

18 A Yes, sir.

19 Q And if they are current he should indicate in his
20 appraisal that they are current, right? Did you say
21 that was sound and accepted practice?

22 A Yes, sir.

23 Q And if they were obsolete as machines, that is to
24 say they had been changed, you said that he should put in his
25 report the reason he changed?

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1 Jq/lf
2 A I said he should know that because that is going to
3 reflect in the cost factors he used and in the depreciation
4 factors he uses.

5 Q Your said you should learn that?

6 A He should know it.

7 Q If he knows it and doesn't refer to it, it doesn't
8 help any, does it?

9 A It helps him make a better report.

10 Q Don't you think he should refer to it in his
11 report, isn't that what your testimony was?

12 A Very often it is done.

13 Q Is that necessarily done?

14 A I think a lot depends upon the purpose and the
15 function that the report is going to serve.

16 Q How about what you called economic obsolescence
17 which is to say the condition under which machinery meant
18 to manufacture something was manufacturing something which
19 was no longer in high demand and you called that economic
20 obsolescence, didn't you?

21 A Yes, sir.

22 Q And if that were a fact you said it should be
23 noted in a report, right?

24 A And the appraiser should be aware of it.

25 Q Supposing, sir -- assume this based on your vast

A-1432

experience as past president of the International and the present president of the domestic or the American Society of Appraisers, just suppose that the person who asked for the appraisal knew all these things, wouldn't that have some significance, some significance, yes or no?

A If my client knows --

Q Yes or no?

A I can't answer yes or no.

Q Say so then.

A I cannot answer that question yes or no.

Q You cannot tell this Court and jury that the fact that a client may know from personal inspections of the plant, for example, that the machinery can work, that that fact is as important as that the appraiser should try each machine himself, you don't think that is more important, that the client knows it than the appraiser should test it, for example?

MR. BRILL: Objection to form.

A If the client knows it, how does the appraiser know? Just because my client knows something I don't know it. I have to know myself.

Q Dear Mr. Sinclair, the purpose of an appraisal is to inform a client, isn't that right?

A Yes, sir.

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2 Q And the way that an appraiser informs a client
3 is he prepares a report and that report he delivers to the
4 client, right?

5 A Yes, sir.

6 All things being equal, the client has to look
7 at the report and say I have learned from this what this
8 appraiser tells me thus and so.

9 A Yes, sir.

10 Q But if a client knows some of these things and
11 the appraiser knows that the client is au courant, familiar
12 with some of the circumstances, is the omission as significant
13 as it would be if the client knew nothing about the property
14 being appraised?

15 A Again, I think it's more important what the appraiser
16 knows than what the client knows.

17 Q How about answering my question?

18 A It's more important --

19 THE COURT: You haven't answered so far.

20 (Question read)

21 A If the appraiser is fully aware of all the facts
22 and he doesn't communicate then it is not but he must be fully
23 aware himself.

24 Q I will repeat the question.

25 If the client knows some of the facts which would

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2 otherwise be set forth in an appraisal, is the omission
3 of those facts, whether or not they are relevant or significant
4 put it aside, is the omission of those facts from the
5 appraisal report as significant as it would be if the
6 customer or client didn't have the underlying knowledge?

7 THE COURT: Answer that question, sir.

8 A If the appraiser knew all these things, no, the
9 omission would not be. But the appraiser has to know as
10 much as the client knows then.

11 Q But when you say that it's important to set forth
12 general conditions, and items like that, if they are known
13 to the client, isn't that relevant, isn't that at least
14 relevant?

15 A I would still include them myself.

16 Q Isn't that at least a relevant consideration?

17 A The appraiser has to consider that.

18 Q Isn't it of some significance that the customer
19 may himself have become familiar with the plant?

20 A Yes, it's relevant.

21 Q And if, for example, you were to have learned that
22 in this particular instant the vice president, the senior
23 executive vice president of the company, Ajax, had made ten
24 or twelve trips to Time & Micro, some of them before the
25 appraisal was ordered, wouldn't that fact be of some relevance

2 and significance to you as an appraiser, yes or no?

3 A Yes.

xxx

4 (Defendant's Exhibit J marked for identification.)

5 Q Mr. Sinclair, do you remember doing an appraisal
6 for Spread Eagle Farm Foods, Inc., and Spread Eagle
7 Farms, Inc., of Clingerstown, Pennsylvania, in June of last
8 year, 1974?

9 A We have done a number for them.

10 Q I show you Exhibit J. That is one of the appraisals,
11 isn't it?

12 A Yes, sir.

13 Q Let me have it back, please. Thank you very much.
14 First of all, I would like to mark it in evidence.

15 MR. BRILL: I have never seen this document before.
16 I would like to look it over.

17 THE COURT: I don't know that you need to look at
18 all of it.

19 MR. BRILL: I would just like a minute to see it.

20 THE COURT: He testified he made the appraisal.

21 MR. BRILL: I object on several grounds. Number
22 one, several of these pages have been tampered where things
23 have been cut off apparently. There is a column --

24 MR. STREAM: Counsel has no way to say a thing
25 like that. There is no evidence that it's been tampered

with or cut off.

MR. BRILL: There are words which appear to be cut.

THE COURT: Is this your appraisal, sir?

MR. BRILL: While he is looking through it, a further objection is that this document is not identified in the pretrial order as a document the defendant was going to use in his case.

THE WITNESS: No, sir, this is part of the letter -- the letter of transmittal is missing.

THE COURT: Is it all of the appraisal?

THE WITNESS: No, sir, it's not all of it.

Q Look at the pages. You said yes before. Take 40 minutes or an hour or ten minutes and tell me whether the pages which are there are yours and don't tell me about the pages you say are not there.

A The purpose --

THE COURT: Not purpose.

Q Tell me whether the pages, sir, which are there are your appraisal. Look at the signature page.

MR. BRILL: I object to the badgering --

THE COURT: He is not doing that.

A There is no signature page. There is no letter of transmittal.

Q Examine the last page and tell me whether you can

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2 examine the signatures on the signature page.

3 A They are not mine.

4 Q Are they your staff?

5 A No, sir, they are not.

6 Q How about the appraisal itself, how about the
7 schedule -- we will mark it as a subdivided exhibit.

xxx 8 (Defendant's Exhibit J-1 marked for identification.)

9 Q Mr. Sinclair, look at the sheets marked Defendant's
10 Exhibit J-1 and tell me -- and your testimony is under oath --

11 A Counsel does not have to remind me of that.

12 Q I did. You remember that. You look at sheets J-1,
13 et cetera, the short sheets and tell me whether or not those
14 figures refresh your recollection that they at least, those
15 sheets at least represent a portion of the appraisal which
16 you did over your typewritten signature on page 1 here as
17 of June 28, 1974, at the indicated form.

18 A May I see my signature, please.

19 Q I said your typewritten signature.

20 A My typewritten name, you mean. It's not my
21 signature, it's my name.

22 THE COURT: You don't need to battle about that.

23 MR. BRILL: Can I request voir dire with respect
24 to this document.

25 MR. STREAM: You don't have anything until we find

2 out that the witness says.

3 A These pages I cannot identify. Apparently there
4 is something missing from them and I don't know what it is.

5 THE COURT: Are each one of those a part of your
6 appraisal, sir?

7 THE WITNESS: I don't know.

8 THE COURT: Can't you tell by the paper?

9 THE WITNESS: No, sir.

10 Q You look at those sheets of paper and you tell this
11 jury that you can't recognize any of those sheets as an
12 appraisal that you did in 1974?

13 A There are items missing. I don't know whether
14 these are the pages or not.

15 Q I am asking you whether you looked at those pages
16 and intend to tell this Court and jury under oath that you
17 can't remember that those were pages from an appraisal that
18 you did in June, '74.

19 A They are not the pages I submitted, no, sir.

20 Q Did you do those pages?

21 A I don't know.

22 Q You never saw them before in your life?

23 A There are items missing. You give me half a page --

24 THE COURT: He isn't asking you that.

25 Q Did you ever in your life see any of those pages,

2 and think before you answer it.

3 A I have seen pages similar to this. But these
4 pages, I don't know.

5 Q You saw pages similar in content?

6 A It's only half a page.

7 Q I want you to treat that half a page as all we
8 have before us.

9 MR. BRILL: I object.

10 THE COURT: Let's hear the question.

11 MR. STREAM: We are going to find out what this
12 witness knows about this appraisal.

13 Q I want you to take this sheet. I don't care if
14 they are one-fifth the original size, I am interested in
15 getting your opinion as to whether the data on these pages
16 alone, which are marked Defendant's Exhibit J-1 for
17 identification, recall to your mind that your company, what-
18 ever it's called -- the front sheet says appraised by
19 George D. Sinclair and George Rossi, whether those pages
20 jar your recollection that at least the data there set forth
21 you saw before today?

22 MR. BRILL: I object to questions on pages which
23 are cut and tampered with.

24 THE COURT: Overruled.

25 A I can't answer. These are not my pages.

Q You never saw them before in your life, that is your testimony?

A This is not my appraisal.

Q Did you ever see those figures before?

A This is not my appraisal.

Q Did you ever see those figures before?

A What figures?

Q The ones marked on page --

A I have no idea.

Q Look at these pages marked J-1 for identification and tell me whether you ever saw the typewritten data therein reproduced. Just run through the pages and then say yes or no. Think before you answer.

MR. BRILL: It's impossible for this witness to identify something of his own which is tampered with if he doesn't have the original to compare it.

THE COURT: Overruled. He is asking if it was a part of the appraisal.

MR. BRILL: How does he know he is not being tricked with a substitute page?

THE COURT: There is no evidence of any trick.

A I can't answer you really. The front part has my name on it but this doesn't mean anything.

Q I didn't ask you that. Do you recognize any of

1 jq/lf

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2 those pages at all as having been prepared by you or for
3 you?

4 MR. BRILL Referring to Exhibit J-1.

5 MR. STREAM: And Exhibit J.

6 MR. BRILL: The last questions all referred to
7 Exhibit J-1 which is the tampered pages.

8 MR. STREAM: Of course it is.

9 A The first part --

10 Q Look at all those pages. I don't care if we take
11 all afternoon.

12 A The first part, items 1 to 3 appear to be the first
13 portion of my appraisal.

14 MR. STREAM: I am going to offer in evidence those
15 three pages at least. Will you be good enough to put your
16 initials, using this red felt tip pen, on those pages which
17 you are at least able to say you recognize.

18 THE WITNESS: They appear to be.

19 Q Look at the pages below J-1 for identification and
20 tell me, sir, whether the items listed under packaging room,
21 cooking room, smokehouse, et cetera, reflect items as to
22 which you did an appraisal, did you do that appraisal?

23 A Yes, sir.

24 Q Did you examine those items of machinery and equip-
25 ment?

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2 A Yes, sir.

3 Q Sir, did you prepare an itemization and a descrip-
4 tion of the items that you examined and appraised?

5 A Yes, sir.

6 Q Did you reach an appraisal figure on them?

7 A Yes, sir.

8 Q Is it your testimony that the description of items,
9 you never saw those descriptions on that sheet or any other
10 form before in your life?

11 A No, sir, that is not what you asked me.

12 Q I ask you now.

13 A I have seen descriptions --

14 Q What is your answer? You recognize the description?

15 A Yes, sir.

16 MR. STREAM: I offer J-1 only insofar as it describes
17 the items.

18 A I didn't say they were mine. I recognized them.

19 Q They were done under your supervision?

20 A I don't know.

21 THE COURT: Don't you know whether you supervise
22 the people in your office? Don't you know when and when
23 not to supervise appraisals in your office?

24 THE WITNESS: Yes, sir, but my definition -- I
25 define two values in my report and there is only one value there.

2 Q I don't care about what is missing. I care about
3 what is here. You recognize the description, so far so good,
4 right?

5 A Right.

6 Q And you recognize the values. So far as they
7 are stated --

8 A I am not sure they are the same. This is two
9 years ago.

10 Q Forget all the values. You recognize the descrip-
11 tions. You are willing to go that far, no further?

12 A In general I recognize that stuff as that at
13 Spread Eagle.

14 MR. STREAM: I renew my offer of J-1 in evidence
15 and I renew my offer of J in evidence with respect to the
16 pages -- strike that from the record. I am getting too
17 excited.

18 I want to offer in evidence that portion of
19 Defendant's Exhibit J which the witness has initialed in
20 red felt pen and identified. Let's take it bit by bit.

21 MR. BRILL: Can I have voir dire?

22 THE COURT: If you think it's important. I don't
23 know what you can elicit.

24 VOIR DIRE EXAMINATION

25 BY MR. BRILL:

2 Q Referring only to Exhibit J, first of all, Mr.
3 Sinclair, the first part of this appraisal, was there any
4 other information provided to the client in connection
5 with this appraisal at the same time as Defendant's Exhibit
6 J?

7 A Yes, sir, there was.

8 Q What was that information?

9 A There was a letter of transmittal --

10 MR. STREAM: I am not interested in anything
11 beyond those pages. I am not suggesting there weren't others.

12 THE COURT: I don't think your question on voir
13 dire is significant at all.

14 MR. STREAM: It's a question of identification only.

15 Q Is this the entire exhibit, Exhibit J, the entire
16 accompanying portion of this appraisal?

17 MR. STREAM: Objection.

18 THE COURT: Sustained.

19 MR. BRILL: I object to the offer. It's an incom-
20 plete document.

21 THE COURT: Objection overruled.

22 MR. STREAM: I ask that portion be received in
23 evidence.

24 THE COURT: I direct it be received in evidence.

25 (Defendant's Exhibit J received in evidence.)

xxx

MR. STREAM: Now, sir, I ask that Exhibit J-1 be received in evidence only to the extent and limited to the statements of the items appraised and nothing else and for no other purpose.

VOIR DIRE EXAMINATION

BY MR. BRILL:

Q When Exhibit J-1 was prepared, Mr. Sinclair, do you remember whether there was something else in this portion that was apparently cut off of these pieces of paper?

A Yes, sir, there was.

MR. STREAM: Objection, irrelevant on the voir dire especially in light of the limited purpose of the offer.

MR. BRILL: Then I suggest we cut the rest of the paper down to which it's limited.

THE COURT: That is nonsense.

MR. BRILL: It's absurd for the defendant to be cutting up pieces of paper and offering doctored exhibits and representing to the jury that these are complete appraisals.

THE COURT: Your objection is overruled and it will be received.

(Defendant's Exhibit J-1 received in evidence.)

THE COURT: All it is is what it's purporting to be. There is no rule about the admission of all the papers. It may be in this connection with an expert so called and having

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1 testified as such and it now being asked about some appraisal
2 which he made, I think counsel is entitled to show what he
3 did.
4

5 MR. BRILL: If it's the entire appraisal but not
6 to cut up the appraisal in bits and pieces and leave some
7 back in the office and bring in the portion which helps
8 him in his case.

9 THE COURT: I have admitted it.

10 MR. STREAM: I ask your Honor to direct the jury
11 to disregard that statement about my leaving stuff in the
12 office.

13 THE COURT: Yes, I so direct.

14 CROSS EXAMINATION CONTINUED

15 BY MR. STREAM:

16 Q The appraisal, and I am going to be referring
17 now in the next group of questions only to the portion of the
18 exhibit called Exhibit J-1 in evidence and those are the
19 descriptions of the items being appraised, do you understand?

20 A Yes, sir, I understand.

21 Q The first item on the first page is a double-bowl
22 stainless steel sink, 4 feet. There follow a group of
23 items dealing with the bulk storage room, dealing with tanks,
24 pumps, defusers, water tanks, whatever you will, okay?

25 A Yes.

2 Q Do you remember that?

3 A Not specifically.

4 Q Look at that page and see if I don't properly
5 characterize the items which were appraised or that are
6 described on that page.

7 A You characterized the items on that page, yes, sir.

8 Q Would you be good enough, please, to read to this
9 jury the serial numbers of each of those items on page 1.
10 Would you do that?

11 A The pump --

12 Q Serial number. Do you know what it is?

13 A 1612472.

14 Q Show it to me.

15 A Right here.

16 C How about the double-bowl stainless steel sink?

17 A It doesn't have a serial number.

18 Q How about the C.I.F. tanks?

19 A They don't have a serial number.

20 MR. STREAM: I move to strike that answer out.

21 I didn't ask you whether they had them. I asked you whether
22 they show them. Do they?

23 THE COURT: I don't think your question was clear.

24 MR. STREAM: I will restate the question.

25 Q If an item doesn't have a serial number you indicate

2 it, don't you, no serial number?

3 A Not necessarily.

4 Q Is it your testimony that a cold room defuser
5 has a serial number or not?

6 A Some do and some don't.

7 Q And if you don't have it down here you are on the
8 winning side?

9 A Either that or you couldn't get it.

10 Q How about pumps, they have serial numbers?

11 A Some do, some don't. Serial numbers are generally
12 put on by tag. They are not always there.

13 Q You know what I will tell you to do, you go
14 through this entire report and you tell me, I am just talk-
15 ing about J-1, and you tell me if there are five serial
16 numbers in the whole section and when you have done that tell
17 me whether all the others don't have any.

18 THE COURT: Suppose you tell how many serial
19 numbers.

20 Q Mark with pencil the serial numbers.

21 A Some manufacturers call them model numbers or
22 type numbers.

23 THE COURT: Mark it once which have serial numbers.

24 Q You talked about serial numbers and that describes
25 an individual unit, doesn't it, Mr. Sinclair? Doesn't it?

2 A No, sir. Some manufacturers identify model,
3 type and serial number. Some identify them individually,
4 some identify them jointly.

5 Q Mr. Sinclair, just list the serial numbers, not
6 the model numbers. That is all I want from you now.

7 MR. BRILL: He just testified that serial number
8 in some cases can be either a model --

9 MR. STREAM: I just want the serial numbers.

10 THE COURT: Put a little circle around the serial
11 numbers.

12 MR. STREAM: That was his direct testimony and I
13 hold it to him.

14 A You are twisting around what I am saying.

15 THE COURT: I can't hear what you say.

16 MR. STREAM: I ask the jury be instructed to dis-
17 regard that and I --

18 THE COURT: Yes, strike and disregard it and pro-
19 ceed to do what you were asked to do.

20 A There are some items identified by catalog number.

21 Q Do what I told you to do, put a circle around the
22 ones marked serial numbers, that is all.

23 Have you done it?

24 A Yes, sir.

25 Q Complete?

1 A As far as I can go.

2 Q Thank you.

3 Your testimony is that as to all of the other items
4 there were no serial numbers, right?

5 A No, sir.

6 Q That is not your testimony?

7 THE COURT: He said no, sir.

8 Q Your testimony is that there may be other serial
9 numbers?

10 A Yes, sir.

11 MR. STREAM: I will undertake to explain this
12 exhibit to the jury during summation, not now.

13 THE COURT: Any other questions?

14 MR. STREAM: Yes, your Honor.

15 Q The fact is, isn't it, Mr. Sinclair, that you
16 never visited Time & Micro facility, is that right?

17 A I never visited Time & Micro.

18 Q You never saw the plant or the machinery itself?

19 A That is correct.

20 Q The testimony you have offered is simply as to the
21 form of the appraisal and appraisal practices?

22 A Procedures.

23 Q By the way, are you familiar with Hamilton Watch
24 Company? Did you ever hear of it?
25

2 A Yes, sir.

3 Q Did you know as a fact that Hamilton Watch Company
4 and Time & Micro and two other watch manufacturers in the
5 country in 1966 were the four foremost manufacturers of
6 jeweled lever wristwatches in this country, were you aware of
7 that fact?

8 A No, sir, I was not.

9 Q Were you aware of the fact that Hamilton Watch
10 Company in 1967 which I tell you is the year of the big
11 auction involved in this case, in 1967 sold its plant and
12 machinery in-place, intact and ready for operation to the
13 United States Government to operate as a fuse manufacturing
14 facility, were you aware of that fact?

15 MR. BRILL: Objection. Irrelevant and it assumes
16 a fact not in evidence.

17 THE COURT: Overruled.

18 Q Were you aware of that?

19 A I was aware of the fact that Hamilton Watch
20 through some transition period --

21 Q You weren't aware of that?

22 A I wasn't aware of the details.

23 Q You weren't aware of what I just said to you?

24 A No, sir.

25 Q Your testimony was based 100 percent on the facts

2 which you were asked to assume by Mr. Brill, right?

3 A As they pertained to assumptions, yes, sir.

4 C And it was hypothetical in that sense, right?

5 A In as far as the assumptions, yes, sir.

6 Q Because it was based upon assumed facts, right?

7 A Yes, sir.

8 Q And if the facts were different the conclusions
9 could be different, isn't that so?

10 A The procedure would not be any different.

11 Q But the description of the procedures, if the
12 description was wrong or inaccurate or incomplete then
13 your conclusions would be different, wouldn't they?

14 MR. BRILL: Objection as to form.

15 THE COURT: Overruled. Let me ask the question.

16 If the facts which Mr. Brill asked you to assume
17 were incorrect, no matter whether they related to procedure
18 or anything else, if they were not correct then your answer
19 would be different, would it not?

20 THE WITNESS: Yes, it would have to be.

21 THE COURT: I don't see how anybody can answer it
22 otherwise, frankly.

23 Q In another sense but in a parallel sense nevertheless,
24 the fact that the procedures which are outlined as suggested
25 procedures, and that is all that these principles which have

A Standards.

A No, sir.

A No, sir.

A I never examined the figures.

Q You can't state an opinion one way or the other?

Q But you can state an opinion concerning the nature of that appraisal, can't you, sir?

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2 A No, sir, I do not.

3 Q Look at the last page of the report. It talks
4 about total fair market value, \$919,000, you don't see that?

5 A Yes, I see that.

6 Q Good. Then it says additional for in-place value,
7 137,806?

8 A Yes.

9 Q Total in-place value, 1,506,891, right?

10 A Yes, sir.

11 Q That is a combination of the fair market value
12 figure of 919 and the in-place value of 137?

13 A Yes, sir.

14 Q Do you see that?

15 A Yes, sir.

16 Q The development of a market value, fair market
17 value in-place is the development, is it not, sir, of a
18 value of a plant filled with machinery and equipment in
19 place on-site and ready for operation, isn't that so?

20 A Yes, sir, it is.

21 Q And the fact that the individual items in that
22 plant are appraised as individual components doesn't make
23 it any necessarily a different kind of an appraisal, does
24 it?

25 A I don't think I understand you.

1 Jq/lf
2 Q You don't understand?

3 A No.

4 Q Do you find anything inconsistent in the preparation
5 of a fair market value appraisal on-site in-place and the
6 statement in that appraisal of the individual values of each
7 component item? Do you find anything inconsistent in that
8 combination? Do you, yes or no?

9 A I am not sure I understand you.

10 Q Oh, dear, I will make it simpler. Assume you have
11 a fair market value appraisal of a plant in-place on-site
12 and ready for operation and assume that is what that is for
13 the moment, okay?

14 A Yes.

15 Q Notice also that that appraisal has the individual
16 values of each and every item, do you see that?

17 A Yes, sir.

18 Q Is that consistent or inconsistent with the prepara-
19 tion of a fair market value appraisal on-site in-place?
20 Is it consistent or inconsistent? Your answer should be
21 it's consistent or inconsistent.

22 A It's inconsistent so far as I can see.

23 Q Fine. Let me read to you from page 3 of Defendant's
24 Exhibit J and it bears your little initials here and this
25 isn't typewritten, these are your initials on page 3?

2 A Yes, sir.

3 Q Not like the typewritten word on page 1?

4 A Yes, sir.

5 Q Let me read to you from that page.

6 THE COURT: This is from Exhibit --

7 MR. STREAM: J, your Honor.

8 Q This is in connection with the market value in-place,
9 right?

10 A Yes, sir.

11 Q A basic principle of equipment value for market
12 value in-place is the individual value of various items in
13 and of themselves which do not necessarily indicate the
14 market value of the total facility. Do you remember that
15 statement?

16 A Yes, sir, it's true.

17 Q Listen carefully. It is rather the total value
18 of all items combined that indicate market value. Is that
19 a true statement?

20 A Yes, sir.

21 Q Therefore, the value concept and the depreciation
22 that was taken -- therefore, the value concept and the
23 depreciation was taken giving consideration to the subject
24 as a total operating plant. Did you write that sentence?

25 A Yes, sir.

1 Q Do you understand it?

2 A Yes, sir.

3 Q Do you recognize this statement: "It is recognized
4 in the concept of preparing market value in-place appraisals
5 that each item in-place and operating serves a function and
6 cannot be separated from the total," right?

7 A That's correct.

8 Q And this fair market value appraisal that you
9 prepared is item by item, isn't it? Yes or no?

10 A Yes, sir, it is.

11 Q And so is that one before you, Plaintiff's Exhibit
12 6, right?

13 A Yes, sir.

14 Q And entirely different, Mr. Sinclair, from an
15 appraisal of a fair market value in-place is an appraisal of
16 liquidating values for a sale under orderly conditions, isn't
17 that right?

18 A Yes, sir, and I so defined in my report.

19 THE COURT: Just answer the question. Don't make
20 any speech about it.

21 Q Just answer my narrow questions, please.

22 A Yes, sir.

23 Q An appraisal of liquidating values connected with
24 a sale ^{under} ~~of~~ orderly conditions is entirely different from a
25

1 Jq/lf

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2 appraisal

2 sale of fair market value on ^{site} ~~price~~?

3 A Different value.

4 Q Fair market value on ^{site} ~~price~~.

5 A Different value.

6 Q Fair market value on ^{site} ~~price~~ can't serve as a criterion
7 for liquidating values concerning -- it can't serve for
8 liquidating values connected with a forced sale, can it?

9 A No.

10 Q And an auction is a forced sale, isn't it?

11 A There are two types. Some auctions are forced
12 sale, some orderly auction sales.

13 Q Orderly auction sales and forced auction sales?

14 A Yes, sir.

15 Q How about the foreclosure of a mortgage lien and
16 a sale under an auctioneer's hammer in liquidation of a plant?

17 A That is what I would classify as a forced sale.

18 Q And this appraisal, Plaintiff's 6, couldn't possibly
19 be used to forecast those values, could it, yes or no?

20 A Not to my knowledge, no, sir.

21 MR. STREAM: I believe I can be done in 10 or
22 15 minutes, your Honor.

23 THE COURT: All right.

24 Q Now I want you to assume, if you will, Mr. Sinclair,
25 the following facts, just accept them blindly as if they were

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2 proved and it will be my job to prove to the Court and
3 jury's satisfaction that these facts are so, okay?

4 A Yes.

5 Q Just accept them. I want you to assume that a
6 fellow named Jesse Thaler, a gentleman named Jesse Thaler,
7 was called upon to do an appraisal and to complete it in
8 one day, okay?

9 A Yes, sir.

10 Q Fact, that three days after he was retained Mr.
11 Thaler visited the plant, Time & Micro down in Strasburg,
12 Pennsylvania, which facility was to be appraised, okay?

13 A Yes, sir.

14 Q Fact, that it contained high precision machinery
15 and equipment for use in the manufacture of watches, all right?
16 Fact, that the same machinery after some modifications could
17 also be used to manufacture the timing mechanisms for fuses,
18 okay?

19 A Fact.

20 Q And that in fact shortly after the appraisal was
21 done a subcontract was let by Ajax to that very facility
22 to use those very instruments down there to manufacture
23 timing mechanisms for fuses, okay?

24 A Yes, I understand.

25 Q And I want you to assume that Mr. Thaler was told

2 that the appraisal was urgent because the plant was going to
3 be used to make those timing devices for fuses under a
4 government contract and that it was needed quickly, okay?

5 A Yes.

6 Q And I want you to assume that at least the second
7 top official of Ajax, which was requesting the appraisal,
8 had been down to that facility himself on one or more
9 occasions and had with his own eyeballs seen that facility
10 before he offered to bid on the government contract as prime
11 contractor and let a subcontract to Time & Micro, will you
12 assume that?

13 A Yes, sir.

14 Q And I want you to assume that Mr. Thaler was given
15 an appraisal prepared two years earlier by the very Hirsch-
16 mann Company which you described as a reputable company,
17 right?

18 A Yes.

19 Q And I want you to assume that all the things I
20 read to you from Mr. Kaefer's letter about their background
21 and experience is true, and that it underlies their appraisal
22 two years before.

23 A Yes, sir.

24 Q I want you to assume that in that appraisal made
25 two years before by that company and by that gentleman a

2 fair market replacement value was fixed as \$1,214,056,
3 okay?

4 A You used two terms, fair market replacement are
5 two different things.

6 Q Say replacement value, that means to put the same
7 thing in again, intact. It was \$2,114,000 plus. I am
8 rounding out the figure.

9 A Okay.

10 Q I want you to assume that Mr. Thaler was given that
11 appraisal, given those worksheets, given that covering letter
12 and told to visit the facility the following Monday to be
13 accompanied by a man who had been particularly hired because
14 of his expertise in working on high, fine precision instruments
15 in a factory, okay?

16 A Yes, sir.

17 Q And he went down to the plant with him at the
18 behest of the customer, okay?

19 A Yes, sir.

20 Q And I want you to assume that Mr. Thaler was told
21 that he had no time to do an independent appraisal but would
22 simply have to rewrite and update it, do you understand
23 what I am saying?

24 A Yes, sir.

25 Q Assume that. And I want you to assume that Mr.

2 Thaler was told to appraise the facility on the basis of
3 the value of the plant in-place and ready for operation,
4 continued operation, and that Ajax was acquiring that plant
5 to run it and not to put it on the auction block. Will you
6 assume that?

7 A Yes.

8 Q And I want you to assume that it was meant to be
9 run by Ajax as a co-owner or a co-partner, will you assume
10 that, too?

11 A Yes.

12 Q To work out a three million dollars government con-
13 tract, right?

14 A Yes, sir.

15 Q Was there anything improper in the acceptance of
16 that assignment by an appraiser?

17 MR. BRILL: Objection to form.

18 THE COURT: Overruled.

19 MR. STREAM: I will restate it.

20 THE COURT: It's not necessary.

21 C Is there anything illegal about that assignment?

22 A Not based on the assumptions.

23 Q I want you to assume everything I said as a God-given
24 fact although it's going to be the jury who decides.

25 A Yes.

2 Q Anything illegal about taking on that assignment?

3 A Nothing that I can see from your assumption.

4 Q Anything wrong with a company called Industrial
5 Plants accepting that contractual assignment?

6 A No.

7 Q You told this jury that you do an appraisal and
8 in the methodology connected with it there are many things
9 that have to be done. That is like a blueprint to heaven,
10 that is the best of all possible worlds.

11 A Standard procedures.

12 Q From time to time the exigencies of your Bible, 29
13 in evidence, but the exigencies sometimes supercede some
14 of those conditions, don't they?

15 A Yes, sir, they do.

16 Q And a man who is told to do an appraisal over the
17 span of a weekend, told to get ready to be down in a plant
18 in Pennsylvania on Monday and was assigned for the first
19 time on Friday and asked to go down and do it in one day
20 and report and telephone that night, I want you to assume
21 that, can't possibly, can he, do all the things that you
22 want him to do? For example, determine the identity of the
23 items, the make, the serial numbers, general conditions,
24 economic obsolescence, reason for changes, study brochures
25 and government publications, tests and so forth, could he?

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2 A No, he could not.

3 THE COURT: Is that all?

4 MR. STREAM: Just a few more questions.

5 THE COURT: All right.

6 MR. STREAM: As a matter of fact, no more.

7 MR. BRILL: A few minutes on redirect.

8 THE COURT: I can't confine him to a certain schedule,
9 counsel.

10 MR. BRILL: Who, your Honor.

11 THE COURT: You heard what I said. I am not going
12 to put a stopwatch at his cross examination.

13 MR. STREAM: I am finished.

14 THE COURT: All right.

15 REDIRECT EXAMINATION

16 BY MR. BRILL:

17 Q Mr. Sinclair, you said that if an appraisal is
18 done under exigent conditions that some things can be dis-
19 posed of. Are there some things that cannot be disposed
20 of?

21 THE COURT: I don't know what that one means.

22 MR. STREAM: Objection to the form.

23 THE COURT: Sustained as to the form.

24 Q Are there any procedures which a professional
25 appraiser cannot dispose of even under exigent conditions?

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2 MR. STREAM: Objection.

3 THE COURT: Same ruling.

4 Q If an appraiser does dispose of certain procedures
5 because of the exigent circumstances under order and customary
6 professional standards, what in your opinion should that
7 appraiser do?

8 MR. STREAM: Objection.

9 THE COURT: Sustained.

10 Q Mr. Sinclair, in your opinion if an appraiser
11 disposes of certain of these procedures because of the exigen-
12 cies of the circumstances, what in your opinion should he
13 state in his appraisal report as to the appraisal?

14 MR. STREAM: Same objection.

15 THE COURT: Sustained.

16 This is rehashing direct.

17 MR. BRILL: It's not rehashing direct. This is
18 the last question on cross examination.

19 THE COURT: I sustained the objection.

20 Q I am sure you remember, as I do, in the lengthy
21 hypothetical Mr. Stream asked you if any one of those factors
22 were not true would that affect the answer you gave to Mr.
23 Stream's question?

24 A Yes, it would.

25 Q Particularly would it affect the answer to your

2 question if it were not true that Mr. Thaler was at no time
3 told to do an independent appraisal --

4 MR. STREAM: I don't understand the question.

5 THE COURT: Sustained as to form.

6 Q Would it affect your answer to Mr. Stream's hypo-
7 thetical question, Mr. Sinclair, if it were not true, as
8 Mr. Stream asked you to assume, that Mr. Thaler at no time
9 was told to do an independent appraisal?

10 MR. STREAM: Objection. The witness said that
11 if any of the facts were changed it would alter and modify
12 his opinion.

13 THE COURT: He already answered your question
14 in effect.

15 MR. BRILL: This is a question about one of the
16 particular assumptions.

17 THE COURT: He said any. That covers all, counselor,
18 at least in my vocabulary.

19 Q Would you characterize that particular assumption
20 as one of the more important assumptions underlying your
21 opinion?

22 MR. STREAM: Objection.

23 THE COURT: Same ruling.

24 Q Mr. Sinclair, you stated you were familiar with the
25 reputation of the Hirschmann Company.

2 A Yes, sir.

3 Q In what way did you know their reputation? Was
4 it as appraisers or was it as importers of machinery?

5 A I knew them as machinery dealers, not as appraisers.

6 Q You testified that there was an inconsistency in
7 Plaintiff's Exhibit 6 between the individual columns showing
8 figures under the term fair market value and a total fair
9 market value in-place appraisal. Can you tell us what that
10 inconsistency is?

11 A Fair market value by its definition is the highest
12 price in terms of money that an item will bring if exposed
13 for sale in the open market. Therefore, being the highest
14 price the inconsistency is there is an additive put on top
15 of this fair market value for in-place. This is the inconsistency
16 Fair market value by its own definition is the highest price
17 in terms of money that an item will bring.

18 THE COURT: If a price is given in-place and the
19 total is given, what difference does it make?

20 THE WITNESS: Fair market value is the highest
21 price in terms. You can't add to something that is already
22 the highest

23 THE COURT: Is there an additional valuation
24 because of the machinery being in-place over a valuation
25 when it is not in-place?

2 THE WITNESS: Yes, but that should be reflected
3 in the fair market value of it.

4 THE COURT: All right. Leave it at that. I
5 don't know what that means.

6 Q In other words --

7 MR. STREAM: I object to the use of the words "in
8 other words."

9 C If there is an additive added onto a fair market
10 value above and beyond that fair market value which represents
11 the so-called in-place value in professional appraisal
12 terms, what does that fair market value represent?

13 MR. STREAM: Objection.

14 THE COURT: Sustained as to form. I think he
15 answered your question.

16 Q Mr. Sinclair, I direct your attention --

17 THE COURT: Are you through now?

18 MR. BRILL: I am through with the exhibit.

19 THE COURT: I am asking if you are through with
20 your redirect, not the exhibit.

21 MR. BRILL: I am not.

22 THE COURT: Proceed and if you are kept much
23 longer it's not anybody's fault.

24 MR. BRILL: I would have about ten minutes more.

25 THE COURT: Proceed and try to finish up so the

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2 witness can go.

3 Q This is Defendant's Exhibit J, Mr. Sinclair, the
4 appraisal, the so-called appraisal of the Spread Eagle Farm
5 Foods, portions of that appraisal.

6 A Yes, sir.

7 Q I direct your attention to the introductory portion
8 of this appraisal and ask that you read to the jury the
9 various headings that appear in that portion.

10 MR. STREAM: The exhibit speaks for itself.

11 MR. BRILL: I will read it.

12 (At this point portions of Plaintiff's Exhibit
13 29 in evidence was read to the jury by Mr. Brill.)

14 THE COURT: You are just reading the titles.
15 What sense is that? All right, if that is all you want to
16 read, I don't care.

17 Q Were there two columns of values on that appraisal?

18 A There were two values defined as the purpose of
19 the appraisal and there would be two values in the final
20 report.

21 Q What were those two values?

22 A The two values would be fair market value in-place
23 and liquidation value.

24 Q Those were listed separately for each item of
25 machinery and equipment on this appraisal?

2 Q Have you ever appraised items of high precision
3 Swiss equipment?

4 A Individual items, yes, sir.

5 Q Those items were appraised as part of a plant
6 or factory of some kind?

7 A Yes, sir.

8 THE COURT: Where was that?

9 A A number of machine shops --

10 THE COURT: Where?

11 THE WITNESS: Throughout central Pennsylvania.

12 THE COURT: How long ago did you do that?

13 THE WITNESS: I have done a number of them in the
14 past fifteen years

15 THE COURT: When was the latest?

16 THE WITNESS: Four, five years ago I guess.

17 THE COURT: Anythin; else, counselor?

18 C In all cases where you have given your opinion as
19 to what is required by ordinary standards of professional
20 appraisal practice, can you tell us what your opinion is
21 based on?

22 THE COURT: What is that again?

23 MR. STREAM: I concede it's based on his great
24 experience throughout all the world as the president and
25 vice president and 30 years of experience. I concede it all.

2 MR. BRILL: I would like to hear the --

3 MR. STREAM: He described his expertise at the
4 beginning of your testimony.

5 THE COURT: I think that is true. I am not ruling
6 on the question.

7 MR. BRILL: Excuse me, your Honor?

8 THE COURT: I don't think the question is necessary.
9 I think it has in effect been answered.

10 MR. BRILL: Mr. Stream asked --

11 THE COURT: I don't care what he asked. What is
12 the question you want to ask again?

13 MR. BRILL: I am asking Mr. Sinclair what his
14 opinion is based on because Mr. Stream --

15 MR. STREAM: I withdraw my objection. It will be
16 faster. Answer it.

17 A My opinion is based upon my own knowledge, my
18 experience with other appraisers, what they do, what is
19 taught to the students taking the machinery and equipment
20 course and upon the code of ethics.

21 THE COURT: What is this with students?

22 THE WITNESS: This is the same procedure I teach
23 to students in my course.

24 MR. BRILL: Nothing further.

25 THE COURT: No recross?

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1 jq/lf

2 MR. STREAM: No, sir.

3 THE COURT: You are excused.

4 (Witness Excused)

5 THE COURT: Any more testimony today from the
6 plaintiff?

7 MR. BRILL: I have no more witnesses today.

8 THE COURT: Then you can't have testimony.

9 MR. BRILL: I have depositions

10 THE COURT: That will be done tomorrow. The
11 jury is excused. Please heed my instructions and come back
12 a little before ten o'clock tomorrow morning.

13 (Trial adjourned to October 17, 1975, at 10:00 a.m.)

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1 Jq/lf

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2 AJAX HARDWARE MFRG. CORP.

3 vs.

69 Civ. 1900

4 INDUSTRIAL PLANTS CORP.

5 October 17, 1975
6 10:00 a.m.

7 (Robing room conference)

8 THE COURT: I understand there is some exhibit,
9 Mr. Brill, which was marked for identification and you say you
10 gave it to Mr. Stream?

11 MR. BRILL: Yes, Plaintiff's Exhibit 2 which was
12 marked in evidence as Plaintiff's Exhibit 12 at the last
13 trial.

14 THE COURT: It hasn't been admitted at this trial.
15 Did I pass on it?

16 MR. BRILL: No. I intend to offer it today during
17 the reading of the Thaler deposition and I requested simply
18 five minutes before the jury came in to compare the original
19 which I gave to Mr. Stream with my copy.

20 THE COURT: I wish you would give it back to him.

21 MR. STREAM: I will tell you the reason I didn't
22 and I want it on the record. After 35 years at the bar I
23 really resent a lawyer standing before a jury and saying
24 to the Court in the jury's presence that I tampered with an
25 exhibit. I think that was unforgiveable and unprofessional.

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1 THE COURT: I haven't the record on it.

2 MR. BRILL: I didn't say that.

3 MR. STREAM: He said it in connection --

4 THE COURT: That is outrageous.

5 MR. BRILL: I request at this time that Mr.
6 Stream produce here and now the original of Exhibit J which
7 he purported yesterday, the original of the document of
8 which he purported yesterday that Exhibit J is a copy.

9 THE COURT: You accused him of cutting off portions.

10 MR. BRILL: Mr. Sinclair testified that that Exhibit
11 J is not an accurate and complete copy.

12 THE COURT: That doesn't make any difference.
13 That doesn't mean Stream did it.

14 MR. STREAM: I represent to y ur Honor that that
15 Xerox copy is precisely in the form that I received it
16 and that it was in Xerox form when I got it. Of course I
17 didn't get the original. My source gave me this and I
18 didn't touch it and I don't care if he says that it's incom-
19 plete or tampered with but he said I did that. That is an
20 indictable offense.

21 THE COURT: You should never have said any such
22 thing.

23 MR. BRILL: I request Mr. Stream produce the
24 original of which he claims --
25

2 THE COURT: That is irrelevant to this present
3 discussion.

4 MR. BRILL: Tell us where he got the copy from.

5 THE COURT: I think you ought to apologize to me
6 and to the jury for making any such statement, counselor.

7 MR. BRILL: I don't believe I made any such state-
8 ment.

9 MR. STREAM: He said in the jury's statement --

10 THE COURT: He can't do it now.

11 MR. BRILL: That exhibit was changed.

12 THE COURT: Don't tell me that you claim that Mr.
13 Stream did it though.

14 MR. BRILL: I withdraw and apologize for any
15 insinuation.

16 THE COURT: Suppose you do it before the jury.

17 MR. BRILL: I request he bring the original.

18 MR. STREAM: I just said that I only had received
19 what was offered yesterday and I expect something to be said
20 to this jury because that was an indictable offense you
21 charged me with.

22 THE COURT: Will you withdraw that statement and
23 apologize to the Court and to the jury and to Mr. Stream.

24 MR. BRILL: I also will state now, as I will state
25 to the jury, that I intend to ask Mr. Sinclair to bring the

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2 original of that appraisal so the jury can see the entire
3 document.

4 MR. STREAM: You bring Mr. Sinclair back if you
5 want. He has been discharged as a witness. This is not
6 rebuttal.

7 MR. BRILL: The jury has the right to see the
8 original of that document. It was represented that that
9 was the original appraisal.

10 THE COURT: You might do it at an appropriate
11 time. Stop talking about it. You just amaze me sometimes.

12 I don't want any statement made to the jury that
13 you are going to produce any original. Do you understand?

14 MR. BRILL: Mr. Sinclair will be here today with
15 the original of that document and I request that he be
16 allowed --

17 THE COURT: I am not going to take that up until
18 we finish our depositions as we planned. I am not going to
19 switch everything around to suit you or to suit Mr. Sinclair.

20 MR. BRILL: It will take one minute to offer the
21 original of that document, your Honor. I think the jury is
22 entitled to know what it was that Mr. Stream did not show
23 to that jury.

24 THE COURT: That is all nonsense what he didn't
25 show. He didn't have it. He says so and accept his represen-

1 Jq/lf

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2 tation.

3 MR. BRILL: He must have told somebody what to
4 send to him.

5 MR. STREAM: There is another statement that
6 represents --

7 THE COURT: You are just picking things out of
8 the air.

9 MR. BRILL: If you let me finish my statement --

10 THE COURT: I resent your suggesting such things
11 as this.

12 MR. STREAM: You just charged me with the crime
13 of creating false evidence.

14 MR. BRILL: Yes.

15 MR. STREAM: I am going to sue you for that. How
16 dare you do that to me?

17 MR. BRILL: I will maintain that charge --

18 MR. STREAM: You are not going to maintain the
19 charge that I did it.

20 MR. BRILL: I said when this Court examines the
21 portions of the original appraisal that were omitted from
22 that exhibit it will be obvious and evidence to this Court
23 why certain pages and certain portions were eliminated.
24 That report was not presented as it was presented to Mr.
25 Sinclair's client. The portions which were omitted were the

1 jq/lf

2 definitions of the liquidation value of the purpose of liquida-
3 tion value.

4 THE COURT: There is no proof of that whatsoever.

5 MR. STREAM: I only used it for the description and
6 I want a transcript of this. I expect an apology on the
7 record and I am reserving the right to sue you for this state-
8 ment in chambers that charged me with a crime. I have had
9 it with you.

10 MR. BRILL: I am asking --

11 THE COURT: I have had enough about this.

12 MR. STREAM: I will give him the exhibit for identi-
13 fication now. I am not going to object to any question he reads
14 That shortens that.

15 THE COURT: There are some objections which plain-
16 tiff wants to make and we will take that up. The stipulation,
17 I believe, made at the commencement of this deposition of
18 Thaler's was as follows:

19 "MR. PAGE: It is hereby stipulated and agreed by and
20 between the respective parties herein that filing, sealing and
21 certification be and the same is hereby waived. It is further
22 stipulated and agreed that all objections except as to the
23 form of the question shall be reserved to the time of trial."

24 That allows that an objection, for instance, on
25

1 Jq/lf

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2 relevancy.

3 MR. STREAM: Before he begins to read, I will make
4 the statement simply that Mr. Thaler is a permanent resident,
5 or he can make it, of the State of Florida and has not
6 for several years been associated with the defendant corpora-
7 tion.

8 MR. BRILL: That was not our agreement, not before
9 I read. Before he reads.

10 THE COURT: Stop talking and let him talk. You
11 constantly interrupt your adversary and the Court.

12 MR. BRILL: I am never allowed to complete a sen-
13 tence.

14 MR. STREAM: I accept what he says. I am telling
15 the Court that I ask for a transcript of this morning's
16 chamber conference. I am going to send it to the bar
17 association and I am going to prosecute this guy civilly for
18 charging me here in chambers.

19 THE COURT: All right.

20 Mr. Stream, I am going to direct you for certain
21 purposes to deposit Exhibit J of the defendant with the clerk
22 and that it be impounded with the clerk. Put it in an
23 envelope and state impounded on it by direction of Judge
24 Levet today.

25 MR. BRILL: I have not yet seen Exhibit 2 either,

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1 Jq/lf

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2 your Honor.

3 THE COURT: He will give it to you. Why are you
4 so damn impatient, if I can deviate a little bit from the
5 ordinary verbiage.

6 MR. STREAM: The record will reflect that I
7 handed Exhibit J and J-1.

8 THE COURT: The clerk has those and will follow
9 my instructions.

10 I will tell the jury that Mr. Brill will make a
11 statement with respect to comments he made yesterday with
12 regard to Exhibit J of the defendant.

13 (In open court - jury present)

14 THE COURT: We will proceed in a few minutes with
15 certain depositions about which I will give you certain
16 explanations. In the meantime Mr. Brill wishes to make a
17 certain statement with respect to something he said yesterday.

18 MR. BRILL: Members of the jury, with respect to
19 Defendant's Exhibit J, portions of which were introduced
20 into evidence yesterday, your Honor recalls that the testi-
21 mony of Mr. Sinclair was that certain --

22 THE COURT: Don't go into that, just make your
23 apology for what you said. I am not concerned with what
24 the testimony of Sinclair was.

25 MR. BRILL: That is not the statement which I wish

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1 jq/lf

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2 to make.

3 THE COURT: We will postpone any statement. I
4 am through with this kind of manipulation of things.

5 MR. BRILL: I wish to state in front of the jury --

6 THE COURT: You will state nothing else before
7 the jury at this time. Do you understand me?

8 We will proceed at this time with respect to
9 certain depositions. Whose is the first deposition you want
10 to read from?

11 MR. BRILL: I request we adjourn reading depositions
12 until Mr. Sinclair can be recalled to the stand to introduce
13 the original of Defendant's Exhibit J.

14 THE COURT: Mr. Stream?

15 MR. STREAM: I object to that procedure.

16 THE COURT: I think it's out of order and I
17 deny and refuse to do it.

18 MR. STREAM: I made my statement and the reasons
19 for my statement clear in chambers before the jury came in.

20 MR. BRILL: I represent to the Court that Mr.
21 Sinclair is on his way to the courtroom now with the original
22 of that document and when he gets here we be permitted one
23 minute to have him go on the stand and identify the original
24 of Exhibit J.

25 THE COURT: I am not going to adjourn this deposition

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1 jq/lf

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2 reading because of that statement by you and the jury may
3 disregard the statement.

4 MR. BRILL: The jury is entitled to see the original
5 of that docume . .

6 THE COURT: That is not the point at all, counselor.
7 You heard expressions of objection to it and I shall probably
8 have to sustain the objections. Now I have to explain, if
9 I may speak without being interrupted again, we will proceed
10 with the deposition which plaintiff seeks to read and that
11 is of Mr. Thaler. Let me say what a deposition is. These
12 depositions, like others, are statements made in answer to
13 questions posed to witnesses before trial and taken down by
14 a reporter such as this gentleman who now acts in the courtroom
15 is doing and then the reporter transcribes the questions and
16 answers and unless there is a waiver of the subscription
17 the witness signs the deposition transcript and they are
18 received with the same force and effect as if the witness
19 were here. This witness happens to be outside of this state
20 at the present time, I believe in Florida.

21 Proceed, Mr. Brill.

22 MR. BRILL: Does your Honor have in front of him
23 the designation of deposition testimony?

24 THE COURT: The designation?

25 MR. BRILL: Yes.

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2 THE COURT: I don't know what you mean by that.

3 MR. BRILL: We filed a list of the pages and
4 the lines which we intend to read.

5 THE COURT: Yes, I have your designations so-called
6 of the pages, yes. Proceed.

7 MR. BRILL: There are one or two places where Mr.
8 Stream asked me to add a few lines which I will add. The
9 other lines I indicated I would want him to read in his
10 reading.

11 THE COURT: Do as stated and as it may be modified
12 by the subsequent oral arrangement with counsel.

13 MR. BRILL: This is the deposition of Jesse
14 Thaler taken in the City of New York on December 10, 1969,
15 and on certain subsequent dates beginning on page 3, your
16 Honor.

17 "Q What is your full name and residence
18 address?

19 "A Jesse Thaler, 70 East 10th Street, New
20 York, New York.

21 "Q What is your present position with
22 Industrial Plants Corporation?"

23 THE COURT: Let me interrupt you a minute. I take
24 it you have put a check mark on the questions you propose to
25 ask, is that so?

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MR. BRILL: Your Honor --

THE COURT: Can't you answer a simple question?

MR. BRILL: My copy has check marks made during the last trial. Most of the check marks are the same --

THE COURT: I will make the check marks to indicate to me that the question has been read. Read the question and the answer.

MR. BRILL:

"Q What is your present position with Industrial Plants Corporation?

"A I am vice president.

"Q How long have you been vice president?

"A Since 1946.

"Q Would you tell me, please, who are the other officers of the corporation?

"A David B. Kriser, president; Sidney B. Kriser, secretary; Robert Botwinik, vice president; that is it."

Page 4, line 8:

"Q There are just two vice presidents?

"A Yes.

"Q As between the two of you, what is the distribution of function?

"A Mine is primarily for appraisal work.

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1 Jq/lf

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2 "His is to sell at public auctions as an auctioneer.

3 "Q When was the corporation Industrial
4 Plants Corporation formed?

5 "A I think early 1930."

6 Page 7, line 7:

7 "Q After interrupting or leaving your
8 studies, what did you do?

9 "A I have it here.

10 "Q All right.

11 "A I am vice president of Industrial Plants
12 Corporation which is one of the leading liquidation organiza-
13 tions in the United States specializing in the sale of
14 industrial plants and equipment. This company is established
15 for over 40 years."

16 Page 33, your Honor, line 12:

17 "Q Mr. Thaler, you say that the next thing
18 that occurred in your dealings with Ajax was that you met
19 with Mr. Howard Klein?

20 "A Yes."

21 THE COURT: I don't know what the context is.

22 MR. BRILL:

23 "Q Do you recall when and where you met with
24 him?

25 "A I met him at the offices, at the Shriro

2 "offices in Manhattan."

3 Page 34, your Honor.

4 MR. STREAM: I ask you read the last question on
5 that page at least to set the date.

6 THE COURT: Page 33, the last question, line 25.

7 MR. STREAM:

8 "Q Do you remember the date?"

9 MR. BRILL:

10 "A It was within a few days of my conversa-
11 tion with Mr. Sax."

12 34, line 9:

13 "Q Who was present at that meeting?

14 "A Just Mr. Klein.

15 "Q And you?

16 "A Yes, that is right

17 "Q Do you remember Mr. Klein's first name?

18 "A Howard.

19 "Q Who was Mr. Howard Klein?

20 "A Vice president of Ajax."

21 MR. STREAM: Your Honor, I am interrupting because
22 I think that counsel should explain to the jury that the
23 questions he is reading now were put by his associate.
24 This deposition was conducted by the plaintiff's lawyers of
25 Mr. Thaler. These questions were put to Mr. Thaler by Mr.

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1 Jq/lf

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2 Brill's associate.

3 MR. BRILL: By Mr. Gartner of our office and a
4 representative of the defendant's law firm was present to
5 cross examine.

6 THE COURT: These questions were asked by Mr.
7 Gartner, your associate.

8 MR. BRILL: My superior, your Honor.

9 "Q Who was Mr. Howard Klein?

10 "A Vice president of Ajax.

11 "Q What was your conversation with him to
12 the best of your memory?

13 "A Primarily it was one, would I be willing
14 to make the appraisal. Number two, how soon could we get to
15 it. Number three, what would be our charge.

16 "Q What was the company that he was asking
17 you to appraise?

18 "A Precision Time Corporation.

19 "Q That was located in Strasburg?

20 "A That is right.

21 "Q What were your answers to his questions?

22 "A I agreed to do the appraisal. I set a
23 time for the appraisal to commence work about a week from
24 the day of my meeting with him and I arranged the fee" --
25 continuing on page 40, your Honor, line 1:

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1 Jq/lf

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2 "Q Did you indicate to Mr. Kle'n how long
3 the appraisal would take?

4 "A At the time I didn't know how long it
5 would take because I had never seen the plant.

6 "Q So you made no statement to him?

7 "A No.

8 "Q Was it at that time that he requested you
9 to make the appraisal earlier?

10 "A No, I think he called me the next day
11 and said he would like me to do this sooner than what I
12 had originally agreed to do.

13 "Q But was it at this same time when you
14 were in Mr. Shiro's office that Mr. Klein gave you the
15 other appraisal?

16 "A Yes."

17 MR. STREAM: At that point since this is the first
18 reference in the reading to the other appraisal and the
19 jury has no idea what the witness is talking about --

20 THE COURT: Yes, give a stipulation.

21 MR. STREAM: I, therefore, ask you to read the
22 question and answer on page 37 at line 17 which will explain
23 to the jury what Mr. Thaler was talking about.

24 THE COURT: That is fair enough.

25 MR. BRILL: This question refers to other things but

1 Jq/lf

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2 if you direct me to read it I will read it.

3 "Q Is that the best of your recollection
4 of the entire conversation that you had with Mr. Klein?

5 "A He said that he realized that the time
6 allotted to make this appraisal was indeed very short and
7 that to help me in making this appraisal he would provide me
8 with an appraisal that formerly had been made by another
9 company, also that he would have a Mr. Haakenson who was
10 to be the vice president in charge of manufacturing of Time
11 & Micro, which it became," and the rest of the questions
12 don't refer to this prior appraisal report so I will continue
13 on page 40 where I was, your Honor.

14 Line 17:

15 "Q But I thought you said that he volunteered
16 to give you the other appraisal in order to help you because
17 of the shortness of the time allotted.

18 "A Yes, a week was short.

19 "C Even a week was considered a short time
20 in any case?

21 "A Yes.

22 "Q What was this other appraisal that he
23 gave you?

24 "A A complete schedule of all the machines in
25 the plant with a complete description of each machine with a

1 Jq/lf

Thaler

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2 "record of the original cost of these machines and the appraised
3 value of those machines.

4 "Q Do you have that appraisal that you were
5 given?

6 "A Yes."

7 At that point this document was identified.

8 THE COURT: What is this document that you are
9 talking about?

10 MR. BRILL: Plaintiff's Exhibit 2 for identification
11 and I offer it in evidence.

12 MR. STREAM: I consent it be received in evidence.

13 (Plaintiff's Exhibit 2 received in evidence.)

14 MR. BRILL: I think it's important to read the
15 understanding of the counsel which appears at line 20 for the
16 identification of that exhibit. Mr. Gartner says, "Do you
17 want to identify for the record, Mr. Berman, what Exhibit
18 2 is?" and Mr. Berman states, "My understanding of Exhibit
19 2 is that it is a copy of an appraisal which was given to Mr.
20 Thaler by Mr. Klein absent the red markings."

21 THE COURT: Who was Mr. Berman?

22 MR. STREAM: Mr. Berman is my young associate who
23 was present during this deposition.

24 MR. BRILL: The witness answers yes. That is so the
25 jury can understand in looking at a page or two or Exhibit 2,

1 Jq/lf

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2 there are red markings in the exhibit which were not present
3 when it was given to Mr. Thaler.

4 THE COURT: Please go on.

5 MR. BRILL: Page 43, line 3, your Honor:

6 "Q It is your testimony that you were given
7 this by Mr. Klein at the meeting in Mr. Shriro's office
8 that you have testified about?

9 "A Yes, to the best of my recollection."

10 Page 45, your Honor, line 10:

11 "Q Did he ask you" --

12 THE COURT: Who does "he" refer to?

13 MR. BRILL: It refers to Mr. Klein.

14 MR. STREAM: That is what happens when you hop,
15 skip and jump.

16 MR. BRILL: Mr. Stream had a list of the designations
17 for many weeks.

18 THE COURT: That doesn't answer the question when
19 pronouns are used and we don't know here today, the jury and
20 myself, who "he" is. It's necessary to have it agreed
21 upon or stated somehow so don't delay us by this kind of state-
22 ment.

23 MR. BRILL: Would you agree that the "he" in the
24 statement refers to Mr. Klein?

25 MR. STREAM: I will read this right later on. You

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2 go ahead and read it.

3 MR. BRILL: Page 45, line 10:

4 "Q Did he ask you to give an appraisal as
5 of the date of the appraisal that you would make to give
6 your best judgment as to what this equipment was worth?

7 "A Yes.

8 "Q Regardless of what the Hirschmann appraisal
9 said the equipment was worth?

10 "A Yes.

11 "Q In other words, he wanted to hire your
12 expert knowledge and experience as an appraiser and he
13 wanted you to give him your best and most careful judgment
14 as to what this equipment listed in the Hirschmann appraisal
15 was worth as of the date that you would make your appraisal?

16 "A Yes.

17 "Q Was one of the reasons for which he gave
18 you the Hirschmann appraisal simply so that you could have a
19 list of the equipment and you would know what he wanted you
20 to appraise?

21 "A Yes, to help me make an appraisal earlier,
22 earlier than I could have if I didn't have the list."

23 Continuing on page 46, line 6:

24 "Q What type of equipment was listed on the
25 Hirschmann appraisal?

1 Jq/lf

Thaler

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2 "A Precision watchmaking machinery mostly
3 and other standard machinery tools.

4 "Q But it was mostly precision watchmaking
5 machinery?

6 "A Yes."

7 Page 47, line 12:

8 "Q Let me ask it this way: at any particular
9 time in any particular appraisal, what was the greatest
10 number of watchmaking machines that you were called upon
11 to appraise?

12 "MR. BERMAN: Do you understand the question?

13 "THE WITNESS: Yes, I do.

14 "A It varied, it could have been a small
15 department of a large company where they did some precision
16 work if they made instruments or anything resembling watch-
17 making which required precision machines. It was then that
18 I saw these Swiss machines.

19 "Q Which Swiss machines?

20 "A For precision watchmaking."

21 Continuing on page 50, line 7, your Honor:

22 "Q Is that your testimony, that as an aggregate
23 you appraised perhaps 25 of these machines?"

24 THE COURT: That doesn't state anything.

25 MR. BRILL: That is the question.

A-1494

2 "A Yes.

3 "Q So that in any one occasion in connection
4 with a particular appraisal you may have appraised only one
5 or two of these machines?

6 "A Or three or four.

7 "Q And you don't recall any particular
8 occasion on which you may have appraised more than four of
9 these machines?

10 "A At the moment I can't recall that.

11 "Q Mr. Thaler, going back to your conversation
12 with Mr. Klein in Mr. Shriro's office, you said that he told
13 you that he wanted this appraisal in connection with some
14 ~~financing~~ ^{financing} ~~finding~~ which would involve the machinery as collateral? ✓

15 "A Yes."

16 Page 52, line 14, your Honor:

17 "Q When he gave you this Exhibit 2, did
18 he give it to you in this form, exactly the way it is now?

19 "A May I see it?

20 "Q Of course (handing document to the witness).

21 "A I had my girl put this cover on.

22 "Q The blue cover that you were referring to?

23 "A Yes.

24 "Q And the tapes which are in there?

25 "A Those are mine.

A-1495

1 Jq/lf

Thaler

470

2 "C
3 are yours?

The tapes that are attached to the cover

4 "A

Right.

5 "Q

Did it differ in any other way?

6 "A

Well, it didn't contain my figures.

7 "Q

You are pointing to the red figures?

8 "A

Yes.

9 "Q

Everything which is in red is yours?

10 "A

Yes.

11 "Q

12 And it was not at the time that you were
13 given this -- and it was not on at the time that you were
14 given this?

15 "A

Right."

16 Page 59, your Honor. I request you direct Mr.
17 Stream not to make faces to the jury.

18 MR. STREAM: I promise not to make any faces to
19 the jury but I will from time to time laugh as is my prerogative.

20 MR. BRILL: If something is funny in the deposition
21 you can go ahead and laugh.

22 THE COURT: The jury will disregard any facial
23 expressions which Mr. Stream made inadvertently.

24 MR. BRILL: Page 59, line 21:

25 "Q

What about this ledger sheet which says
"Summary of Appraisal Values of Machinery and Equipment," was

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2 "that part of the Hirschmann report given to you by Mr.
3 Klein --"

4 THE COURT: What is the answer?

5 MR. BRILL: I am pausing to show what the ledger
6 sheet is. "Summary of Appraisal Values of Machinery and
7 Equipment" of the former Precision Time Corporation.

8 THE COURT: What is the answer?

9 MR. BRILL:

10 "Q Was that part of the Hirschmann report
11 given to you by Mr. Klein?

12 "A I think this is my summary.

13 "Q That is your summary?

14 "A Yes, I think it is my summary, I am not
15 sure.

16 "Q What about this sheet, appraisal of the
17 equipment of the former Precision Time Corporation, is that
18 part of the Hirschmann report that was handed to you?

19 "A Yes."

20 Identifying this document also attached to
21 Plaintiff's Exhibit 2.

22 "Q If this is indeed your summary, the
23 summary of appraisal value ledger sheet, when did you make
24 that summary?

25 "A Sometime if I did this, I don't remember

2 "this, if I did this it was soon after my appraisal."

3 To continue on page 81, line 13:

4 "Q Now that you have fixed the date of
5 August 15th as the date on which you made the inspection,
6 do you have any better recollection of when it was in relation
7 to that date that you talked with Mr. Klein about making the
8 inspection on August 15th?

9 "A I would be able to tell you accurately
10 if I referred to my day book.

11 "Q You have no other recollection?

12 "A Several days.

13 "Q Several days before?

14 "A Yes.

15 "Q In those several days, Mr. Thaler, what
16 did you do with respect to this appraisal?

17 "A Nothing.

18 "Q When you met Mr. Hankenson at the Wall
19 Street Heliport, did you have a conversation with him about
20 the appraisal?

21 "A Naturally. We talked about what we were
22 going to see.

23 "Q What did you say and what did he say?

24 "A Well, he told me that what I am going to
25 see was a highly precision plant, that it was originally

2 "Designed and engineered to produce precision watchworks
3 and that the plant is presently shut down, was presently
4 shut down and that it was the desire of the Ajax Company
5 to utilize this plant which Mr. Haakenson was quite familiar
6 with to advise them that the equipment contained in this
7 plant was in principle the kind of machinery that they
8 would require in order to make the fuses for the government."

9 Next is page 86, your Honor, line 21:

10 "Q What materials did you have with you
11 which you intended to use in making the appraisal, what
12 materials did you have?

13 "A Just a pad and a pencil to make a record
14 of each machine that I saw and at the same time utilize this
15 list.

16 "Q Which list?

17 "A The inventory list on which I made notes.

18 "Q Which inventory list?

19 "A The Hirschmann inventory.

20 "Q The Hirschmann report?

21 "A Yes.

22 "Q That is Plaintiff's Exhibit 2 for identi-
23 fication?

24 "A Right.

25 "Q You had that with you?

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1 JG/Lf

Thaler

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2 "A Yes, sir.

3 "Q Did you discuss that with Mr. Haakenson
4 on the trip?

5 "A I don't remember, I had no reason to
6 discuss this report with him.

7 "Q When you arrived at the plant, Mr.
8 Thaler, what happened?

9 "A There was a representative there. I
10 believe he was Mr. Shriro's representative who was at the
11 plant in a custodian's capacity.

12 "Q Do you remember his name?

13 "A No, and then we began going from one
14 machine to another evaluating it.

15 "Q Who began?

16 "A I did.

17 "Q You alone?

18 "A With Mr. Haakenson.

19 "Q What procedure did you follow?

20 "A I viewed the machine to determine the
21 condition which was the most important thing, referred to
22 the original cost of this machine in addition to its approxi-
23 mate age which would also be a determining factor in the
24 value and established my values as against the values that
25 were on this Hirschmann appraisal.

A-1500

2 "Q How did you establish your values?

3 "A Well, there were a number of items which
4 we sell which Industrial Plants Corporation sells at auction
5 sales very frequently, standard equipment."

6 THE COURT: Just a minute. Are there some of the
7 jurors uncomfortable in the rear?

8 Allright, go ahead.

9 MR. BRILL: Page 88, your Honor, line 18 -- I
10 think I ought to go back to line 13:

11 "Q How did you establish your values?

12 "A Well, there were a number of items which
13 we sell which Industrial Plants Corporation sells at auction
14 sales very frequently, standard equipment.

15 "Q Yes.

16 "A So that I was able to make a determination
17 without any reference to the appraisal.

18 "Q Do you mean to the Hirschmann appraisal?

19 "A The Hirschmann appraisal.

20 "Q Yes.

21 "A As to others I made reference to it to
22 determine its original cost and its age because I didn't
23 have time to look up the serial numbers to see when it
24 was built and also age and price and then looking at the
25 machine.

1 Jq/lf

Thaler

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2 "Q What price?

3 "A The original cost.

4 "Q The original cost of the machine?

5 "A Yes.

6 "Q Yes.

7 "A And after that I developed a figure which
8 would be compatible with its present market value as related
9 to its original cost as indicated on the list.

10 "Q How did you develop that figure?

11 "A My experience in seeing a machine and
12 being able to make a determination as to its value.

13 "Q You did that with respect to each
14 specific piece of equipment, I take it?

15 "A Yes, but in addition to the items that
16 were not on the list.

17 "Q But you made that kind of an appraisal
18 with respect to each of the items of equipment which was on
19 the list?

20 "A Right.

21 "Q That is on Plaintiff's Exhibit 2 for
22 identification list?

23 "A Yes.

24 "Q Do I take it that the Hauser 2 spindle
25 profile miller was also standard machine shop equipment" --

Jq/lf

Thaler

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"A 1969.

"Q What was the other occasion on which you tried to determine the original cost of those machines?

"A I went to the machine tool show in Paris.

"Q When?

"A In July.

"Q Of what year?

"A 1969.

"Q Were they showing those machines?

"A Yes, the Swiss manufactureres were represented there.

"C With respect to the machines, these Hauser 2 spindle profile millers which are on this list in Plaintiff's Exhibit 2 for identification, were the machines which they were showing in Paris in 1969 the same machines or were they different, more up-to-date models?

"A The design and principle was the same.

"Q But the original cost of the machines which you tried to ascertain in 1969 on these two occasions with the president of the Hirschmann Company and at the Paris show, were they the price of the current models that you asked about or were they the prices of the former models?

"A They were the prices of the current models.

2 referring to --

3 THE COURT: Referring to what? It doesn't say.

4 MR. BRILL: I am attempting to point it out to the
5 jury, referring to this second item.

6 THE COURT: I don't know, Mr. Stream must be con-
7 sulted about these.

8 MR. BRILL: There was concern about reading --

9 MR. STREAM: Please, no comments.

10 MR. BRILL:

11 "Q Do I take it that the Hauser 2 spindle
12 profile miller was also standard machine shop equipment?

13 "A Standard precision Swiss machine.

14 "Q I see that is a precision Swiss machine?

15 "A That is right.

16 "Q In other words, it is not standard machine
17 shop equipment?

18 "A It is standard but I believe it is
19 Swiss manufactured.

20 "Q In arriving at your appraisal of the
21 value of that type of a machine of that specific machine
22 were you able to do that from your knowledge of what such
23 machines sell for at auction in the United States?

24 "A Not from any knowledge that I had of
25 auction sales pertaining to this equipment.

"Q How did you arrive at your evaluation for this equipment?

"A Based on the fact that it was a Swiss machine, that it was very difficult to obtain, knowing the new price, knowing the condition, knowing the age I was able to make a determination as to its value.

"Q You checked each one of those machines to see its condition?

"A Oh, yes.

"Q How did you determine what condition it was in?

"A Well, to an experienced eye you can look at a machine -- see pretty well its physical condition.

"Q Did you do anything else to determine its condition?

"A Only visually.

"Q You mean only by looking at the machine?

"A Yes.

"Q Were these machines operating at the time that you were there?

"A They were all idle.

"Q You did not turn them on?

"A There would be no purpose to that unless I used measuring instruments to determine the accuracies.

1 Jq/lf

Thaler

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2 "C But you did not turn them on?

3 "A No, I did not.

4 "Q How did you determine the original cost
5 of, say, this Hauser 2 spindle profile miller?

6 "A It's indicated on the list.

7 "C On Plaintiff's Exhibit 2 for identifica-
8 tion?

9 "A Right.

10 "C And that was what you relied on?

11 "A That is right.

12 "Q Did you make any other effort at any
13 time to ascertain what the original cost of that machine was?

14 "A Yes.

15 "Q When did you do that?

16 "A I did it on two occasions.

17 "C When?

18 "A One was when I had a meeting with a Mr.
19 Dunky.

20 "Q Who is Mr. Dunky?

21 "A The president of Hirschmann and Company.

22 "Q When did you have that meeting?

23 "A To the best of my recollection it was
24 around in June sometime.

25 "C June of what year?

A-1505

1 Jq/lf

Thaler

480

2 "A 1969.

3 "Q What was the other occasion on which you
4 tried to determine the original cost of those machines?

5 "A I went to the machine tool show in Paris.

6 "Q When?

7 "A In July.

8 "Q Of what year?

9 "A 1969.

10 "Q Were they showing those machines?

11 "A Yes, the Swiss manufactureres were repre-
12 sented there.

13 "C With respect to the machines, these
14 Hauser 2 spindle profile millers which are on this list in
15 Plaintiff's Exhibit 2 for identification, were the machines
16 which they were showing in Paris in 1969 the same machines
17 or were they different, more up-to-date models?

18 "A The design and principle was the same.

19 "Q But the original cost of the machines
20 which you tried to ascertain in 1969 on these two occasions
21 with the president of the Hirschmann Company and at the Paris
22 show, were they the price of the current models that you
23 asked about or were they the prices of the former models?

24 "A They were the prices of the current
25 models.

A-1506

1 10/12
2 "Q Apart from these two occasions in which
3 you say you tried to ascertain the prices of the current
4 models of the Hauser 2 spindle profile millers in 1969,
5 was there any other occasion on which you attempted to
6 ascertain the original cost of the machines that were in the
7 Time & Micro plant?

8 "A There was no need to go beyond the infor-
9 mation that I have already acquired.

10 "Q Mr. Thaler, I just want, you know, to
11 box this in in terms of knowing whether there was any other
12 occasion on which you did it. I am not asking you whether
13 there was any need. I just want to know, yes or no, was there
14 any other occasion on which you tried to find out the
15 original cost of the machines in the Time & Micro plant?

16 "A My answer was that I had enough information
17 not to want to make any more investigations as to the value.

18 "Q Then I take it that that means you did
19 not make any other investigations as to the original cost
20 of the machines in the Time & Micro plant?

21 "A That is right.

22 "Q And that as you have already testified you
23 got the original cost figures of the machines in the Time &
24 Micro plant from Plaintiff's Exhibit 2 for identification?

25 "A Right.

2 "Q Mr. Thaler, would you please describe
3 for us the process which you followed at the Time & Micro
4 plant in viewing and appraising the machines? If I may
5 refer to the testimony you have already given, do I under-
6 stand that what you did was to go from machine to machine
7 with the exhibit 2 list in hand and view each machine and
8 it was then at that time that you made these red ink notations
9 on the list?

10 "A Yes.

11 "Q The red check marks I take it indicate
12 that that machine was there?

13 "A And that I saw it.

14 "Q And that you saw it?

15 "A Yes.

16 "Q Were the inventory numbers on the machines
17 themselves?

18 "A Yes.

19 "Q In each case, Mr. Thaler, did you make
20 sure that the inventory number on the machine checked out
21 with the inventory number which was on the list?

22 "A Yes.

23 "Q And that the machine itself corresponded
24 with the description which was next to the inventory number
25 on the exhibit 2 list?

1 Jq/lf

Thaler

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2 "A That is correct.

3 "Q I take it that took quite a bit of time
4 to do?

5 "A Until ten o'clock that night.

6 "Q Until ten o'clock that night?

7 "A Yes.

8 "Q That was to go through the entire list" --

9 THE COURT: May I suggest, counselor, when there
10 is a repetitious question you don't need to read it if it's
11 answered in the prior question. We can save a little time
12 thereby.

13 MR. BRILL: I will attempt to.

14 "Q That was to go through the entire list of
15 equipment in the manner that you have described?

16 "A That is right."

17 Page 106, your Honor, lines 3 to 25:

18 "Q Apart from what you have told us now,
19 Mr. Thaler, did you do anything else in arriving at your
20 appraised values before you gave that figure to Mr. Klein?

21 "A I did nothing else but tally the figures.

22 "Q Again, apart from what you have told us,
23 Mr. Thaler, was there any other source of information which
24 you had in arriving at your appraisal figures?

25 "A My determination was made on the day when

A-1509

2 "I made the appraisal.

3 "Q There was no other source of information
4 that you used in making those appraisal figures?

5 "A No, there was no need for anything in
6 addition to what I had.

7 "Q Did you receive any information by word
8 of mouth from anybody with respect to the value of the
9 machines on the day that you were making the appraisal?

10 "A I didn't consult anyone.

11 "Q And you received no information in written
12 form on the day that you were making the appraisal?

13 "A No, sir.

14 "Q With respect to the value of the machines?

15 "A No."

16 MR. STREAM: Just a second. Where did you just
17 read that? What page was that?

18 THE COURT: 106.

19 MR. STREAM: You haven't read 24 on page 106?

20 MR. BRILL:

21 "Q With respect to the value of the machines.

22 "A No."

23 At this point I simply for clarification I want
24 to skip ahead for one or two pages and come back.

25 MR. STREAM: I want these read in sequence, Judge.

2 We have enough trouble with the hops, skips and jumps. Let's
3 read them in sequence.

4 THE COURT: Stick to the paging as indicated.

5 MR. BRILL: This is the way I indicated in my
6 designation.

7 THE COURT: Follow your indication if it is in
8 line with the sequence. That is the point. I don't want to
9 get into some other problem. Read it as it occurs here.
10 If the next page after 106 is what?

11 MR. BRILL: 107.

12 THE COURT: Read there.

13 MR. BRILL: Line 2:

14 "Q You say that you then after talking with
15 Mr. Klein on the evening of August 15, 1966, thereafter
16 confirmed by telegram the appraisal which you had made?

17 "A That is right."

18 MR. STREAM: I request counsel, your Honor, to
19 be good enough to read the next two questions so that we at
20 this time can identify that telegram and not omit it. That
21 is one of the things I don't have to go through.

22 THE COURT: Go ahead and read on page 107.

23 MR. BRILL: This is one of the questions I objected
24 to.

25 THE COURT: I am not going to permit you to skip

all around in this deposition.

MR. BRILL: I submitted written objections to certain questions and the basis of that objection is that a copy of a telegram which went to somebody other than the plaintiff --

THE COURT: I am not listening to this and it's irrelevant. I am directing you to proceed. Nothing else is going to be done. You will do what the Court states.

MR. STREAM: I don't have to remind the Court that these were questions put by his associate.

THE COURT: Of course.

MR. BRILL: And questions --

THE COURT: Proceed with the reading.

MR. BRILL: Questions in depositions may relate to matters not admissible at trial and simply because something appears in a deposition does not mean it's relevant evidence to this lawsuit.

THE COURT: You are reading it.

MR. BRILL: I chose not to read portions which relate to something which is irrelevant to this lawsuit.

MR. STREAM: I ask it be read. I ask that he read the questions that appear on page 107 at line 2 and line 7 and line 12 and line 15 and then offer the exhibit which his counsel marked for identification. Otherwise, the jury

2 is left up in the air. I will do it later.

3 MR. BRILL: That is exactly what I object to, your
4 Honor.

5 THE COURT: I think it's proper for your adversary
6 to request the reading of these questions on page 106 and
7 7 to show the context. Go ahead and read them.

8 MR. BRILL: I request a recess that we might have a
9 ruling on the objections I submitted so that we do not
10 have this constant interruption every time we come to an
11 objection.

12 THE COURT: Disregard that comment, members of
13 the jury. Please go on and do as I say.

14 MR. BRILL:

15 "A I thought it was the professional thing
16 to do to confirm my telephone conversation.

17 "Q Was that done pursuant to his request
18 or did you do that simply because you thought that was the
19 professional thing to do?

20 "A I thought it was the professional thing
21 to do, to confirm my telephone conversation.

22 "Q Do you have a copy of the telegram which
23 you sent to Mr. Klein?

24 "A Yes, I do."

25 If Mr. Stream wants to offer it later. He can do

A-1513

that later.

MR. STREAM: I insist it be read.

MR. BRILL:

"Q When was this telegram sent?"

MR. STREAM: "Do you have a copy of the telegram" --

MR. BRILL: I read that.

THE COURT: Stop your quibbling on this on both sides.

MR. BRILL: I read that and I request to proceed without this interruption.

THE COURT: It isn't all one-sided, Mr. Brill.

MR. STREAM: The next question:

"May I see it please?" and Mr. Berman handed the document to Mr. Gartner.

THE COURT: Read that.

MR. BRILL:

"Q When was that telegram sent?"

THE COURT: I have told you to read the questions down the line here.

MR. STREAM: I ask the Court to direct Mr. Brill to read the comment by Mr. Gartner at line 17 and then if he doesn't want to offer that exhibit I will wait and do it later but I want him to read the comment.

THE COURT: Read the questions and the comment.

A-1514

2 MR. BRILL: Your Honor wishes me to read the
3 comments of counsel.

4 "MR. GARTNER: Would you please mark the telegram
5 that Mr. Berman has produced as Plaintiff's Exhibit 4 for
6 identification?"

7 MR. STREAM: His counsel asked the Court to inquire.
8 Is counsel going to offer the telegram or should I wait and
9 do it myself?

10 MR. BRILL: I don't intend to offer it.

11 THE COURT: All right.

12 MR. BRILL:

13 "C When was this telegram sent, Mr. Thaler,
14 do you know?"

15 MR. STREAM: I object to his reading anything further
16 with respect to that telegram since it hasn't been offered in
17 evidence. I expected it to be offered in evidence. If he
18 does not offer it he can't refer to it in the next questions.

19 THE COURT: Sustained.

20 MR. BRILL: I am attempting to skip the questions
21 which Mr. Stream doesn't want me to read, your Honor. I
22 will go on to page 132, your Honor, lines 19 to 25:

23 "Q Do you customarily, Mr. Thaler, go to
24 your office on Saturday?

25 "A Not customarily.

1 Jq/lf Thaler 490
2 "Q Can you tell from your day book whether
3 you were in your office on August 13th?

4 "A I would have a record of that. On August
5 13th I was at my son's house.

6 "Q I see. Can you tell from the day book
7 whether you were in your office on Sunday, August 14th?

8 "A I was at my brother's house.

9 "Q And not in your office?

10 "A No.

11 "Q Would you please, Mr. Thaler, tell me
12 whether on August 15th when you were at the Time & Micro
13 plant you spent all of your time in the main plant or did
14 you go to some other portion of the premises?

15 "A Because the main plant contained the
16 major part of the equipment, I spent more time there but I
17 also went to a warehouse where I saw equipment which was not
18 installed. It was stored.

19 "Q Was that at the Pequá plant?

20 "A Yes, I believe that is the name. They
21 only had one other plant besides this, it was like a warehouse.

22 "Q I see.

23 "A Yes.

24 "Q And you say the equipment there was
25 stored?

1 Jq/lf

Thaler

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2 "A Yes.

3 "Q Was the equipment boxed?

4 "A No, it was just stored as surplus equip-
5 ment.

6 "Q And you examined the equipment there, too?

7 "A To the best of my belief. I would like
8 to make an addition to the statement that I just made, some
9 of the equipment, some portion of the equipment as I recall
10 was installed there..

11 "Q Was there any equipment which was in
12 boxes?

13 "A It was in crates.

14 "Q In crates?

15 "A Yes."

16 THE COURT: You ask a question and it's the same
17 identical thing all over again.

18 Go ahead.

19 MR. BRILL: This is the way the deposition reads.

20 THE COURT: But you don't have to read every portion
21 of the deposition if it's been answered in the previous ques-
22 tion.

23 MR. BRILL:

24 "Q Did you open those crates?

25 "A I didn't have to open them, I was able to

A-1517

"see the equipment without opening the crates.

"Q How were you able to do that?

"A Because there are spaces between the wood.

"Q Are you referring to the slats?

"A The wood slats, yes.

"Q Is there any notation on here as to which of the equipment was so boxed or crated or is that not indicated?

"A No, that is not indicated. There is no indication, no marking as to whether the machinery was in the warehouse or --

"Q Whether it was crated, installed or in the warehouse?

"A That is right.

"Q There is no indication of that?

"A No.

"Q When I say is there any indication here in the record I mean Plaintiff's Exhibit 2 for identification.

"A No, not to my knowledge."

And now to page 140, your Honor. Line 19:

"Q Then apart from this exhibit, Plaintiff's Exhibit 2 for identification, there were no other papers or records which you used in making your appraisal?

2 "A Yes.

3 "Q Is the answer that there were no others?

4 "A Yes, there were no others.

5 "Q You consulted no other materials?

6 "A I didn't get your question.

7 "Q You consulted no other materials in the
8 course of the appraisal?

9 "A Consulted, did you say?

10 "Q Consulted, yes. Did you look at any
11 other materials in making your appraisal?

12 "A Nothing other than what was contained
13 in the plant and the warehouse.

14 "Q I mean you looked at no books nor papers
15 of any kind?

16 "A No."

17 Page 147, Mr. Stream requested that I read lines
18 11 to 25:

19 "Q Was there a letter that accompanied this
20 appraisal which you sent to Ajax, Plaintiff's Exhibit 12 for
21 identification?" and in this trial that refers to Plaintiff's
22 Exhibit 6 in evidence, your Honor. I will substitute the
23 appropriate exhibit numbers where necessary.

24 "Q Did you send a letter along with it?

25 "A A covering letter.

A-1519

"C Yes. Do you have that letter?

"A It's probably in the file.

"MR. GARTNER: Would you please mark letter dated August 19, 1966, addressed to Ajax Hardware Manufacturing Corporation consisting of two pages as Plaintiff's Exhibit 13 for identification," and the original of that letter is in evidence as Plaintiff's Exhibit 5 in this trial, your Honor.

Continuing on page 148 -- I think I can read on page 148 without --

MR. STREAM: Any reference to that telegram is improper since counsel declined to let it go before the jury. That is elementary, my dear Watson.

MR. BRILL: The original receipt copy of that telegram is in evidence.

THE COURT: I don't think so.

MR. STREAM: The exhibit the witness is referring to is the exhibit which I offered to counsel to put in evidence and he chose not to.

MR. BRILL: Fine, you read this portion of it.

THE COURT: Go ahead, please.

MR. BRILL: Page 149, lines 14 to 25:

"Q Did you have any other conversation with Mr. Klein between the time that you talked to him on the night

2 "of August 15th and the time that you sent the telegram on
3 August 17th?

4 "A I don't recollect having had any conversa-
5 tion with him between those two days.

6 "Q Does your day book indicate any conversa-
7 tion with him on August 16th?

8 "A On August 16th there is a memorandum
9 here that at three o'clock I was to call Mr. Klein, Mr.
10 Howard Klein.

11 "Q I believe you testified that the chances
12 were that if there was such a notation you probably did call
13 him?

14 "A I would assume that that would be the
15 case."

16 Page 150, your Honor, continuing, line 4:

17 "Q Do you have any recollection now about
18 what you talked with him about in that conversation bearing
19 in mind that the telegram which is Plaintiff's Exhibit 4
20 for identification was"--

21 MR. STREAM: I object to that question.

22 THE COURT: It's not in evidence.

23 MR. BRILL: I will simply read the first part of
24 the question. The question is whether he has any recollection.

25 MR. STREAM: I object. I object to reading a part

A-1521

2 of the question. If he can't read it all he can't read any-
3 thing. I will get to it later.

4 THE COURT: That is correct. Next question.

5 MR. BRILL:

6 "Q Mr. Thaler, in your telegram" --

7 MR. STREAM: Objection. This is line 22, your
8 Honor, and he persists to referring to the telegram that
9 he did not put in evidence. We will have a long speech but
10 I make my objection simply.

11 THE COURT: I sustain the objection to the question.
12 Do what you like.

13 MR. BRILL: I request a short recess at this time.

14 MR. STREAM: No way.

15 THE COURT: That is not necessary.

16 MR. BRILL: If your Honor --

17 THE COURT: Just go on with the question.

18 MR. BRILL: I will offer the telegram in evidence
19 reserving objections to any portions of the telegram --

20 THE COURT: Either it's in or out.

21 MR. STREAM: Either you submit it entirely without
22 comment of reservation or no.

23 MR. BRILL: May I have the telegram?

24 THE COURT: Do you want to offer it? I will rule
25 on it after hearing Mr. Stream's objection. What are the

A-1522

1 jq/lf haler

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2 objections specifically?

3 MR. BRILL: Suddenly the rules are that we have
4 to offer entire documents.

5 THE COURT: I asked Mr. Stream what his objection
6 was.

7 MR. BRILL: I would like to have it marked for
8 identification.

9 MR. STREAM: It has been marked for identification.
10 It was marked Plaintiff's Exhibit --

11 (Defendant's Exhibit E now becomes Plaintiff's
12 Exhibit 30.)

xxx

13 MR. STREAM: If he has a reservation he can't
14 offer it.

15 MR. BRILL: I am offering it for the written contents
16 of the document, not for internal markings made on it in the
17 defendant's offices which are not binding on the plaintiff
18 and which are strictly hearsay and the same objection will
19 apply --

20 THE COURT: Offer it as it is. Let me see it
21 after it has been marked.

22 MR. STREAM: When a lawyer offers an exhibit
23 into evidence he offers it entirely. He doesn't offer it
24 in part. He is referring to a date stamp which he says is
25 hearsay which is ridiculous because it's the defendant's date

1 jq/lf

Thaler

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2 stamp and you can't have --

3 THE COURT: Please step down. Nobody asked you to
4 come up here.

5 Either this all comes in or none. Objection sus-
6 tained.

7 MR. STREAM: Thank you.

xxx 8 (Plaintiff's Exhibit 30 received in evidence.)

9 MR. STREAM: Before it's received, did counsel
10 accept that? I want to hear the offer on the record.

11 THE COURT: The whole thing is offered, counselor.
12 That is the way I take it. You can't pick and choose.
13 Are you offering it or are you not offering?

14 MR. BRILL: I will offer the entire document, your
15 Honor.

16 MR. STREAM: No objection.

17 THE COURT: Received. Let's get back to the deposi-
18 tion.

19 MR. BRILL: Page 150, line 22:

20 "Q Mr. Thaler, in your telegram of August
21 17th to Ajax you say that the plant equipment is in excellent
22 condition. You further say that the machinery contained
23 therein is plainly of Swiss manufacture and is not available
24 to American manufacturers unless they are members of the
25 trust. Where did you get that information from, how were you

A-1524

1 Jq/lf

Thaler

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2 "aware of the fact that this machinery was not available to
3 American manufacturers?

4 "A Mr. Haakenson advised me of the difficulties
5 in obtaining such equipment from Switzerland because there is
6 a syndicate that controls the importation of this equipment
7 to the United States and if they are members of such a
8 syndicate the delivery schedules are between two and three
9 years from the date of the order.

10 "Q What is this syndicate?

11 "A The syndicate is a group of Swiss watch
12 manufacturers who control the shipment of watchmaking
13 machinery to the United States and other areas in order to
14 prevent or eliminate or obstruct any foreign watch manufacturer
15 to compete with Swiss watch manufacturers.

16 "Q Do you know that of your own knowledge?

17 "A No, I don't.

18 "Q You relied entirely upon Mr. Haakenson?

19 "A Not entirely.

20 "Q What else did you rely on?

21 "A I want to get the date -- sometime during
22 the late 30's or early 40's I had a matter of business with
23 Ard Bulova and we were riding from the plant where I took
24 him I believe to look at some equipment to his office and
25 he then told me the difficulties that he had in importing

1 3q/1f

Thaler

500

2 "Swiss gear-cutting equipment and Swiss screw machines and

3 he --

4 "C Mr. Bulova is dead, is he not?

5 "A Yes, Ard Bulova is dead.

6 "Q Will you continue?

7 "A He asked me what I could do.

8 "Q Excuse me. I really don't want you to
9 relate any more a conversation with a dead man. Was there

any other knowledge or experience in which you relied in
11 making this statement that there was a Swiss trust?

12 "A Principally on the enlightenment that
13 was mine from Mr. Haakenson.

14 "Q Apart from Mr. Haakenson and Mr. Bulova,
15 that you have mentioned, was there any other source of
16 information that you had?

17 "A No, only of my own knowledge that machinery
18 in general was very difficult, new machinery was very difficult
19 to come by.

20 "Q Swiss or American?

21 "A Swiss or American.

22 "C Or any other?

23 "A Well, particularly Swiss or American.

24 "Q As far as your statement that the delivery
25 of this type of machinery, that is the machinery of Swiss

2 "manufacture ranging between two and three years even if
3 the American manufacturers are members of the trust, of the
4 Swiss trust, where did you get that information?

5 "A From Mr. Haakenson.

6 "Q Did you have any other source of that
7 information?

8 "A No.

9 "Q Your statement that manufacturers in this
10 country would pay important premiums over and above the
11 values as established if this were made available to them,
12 what is that based on?

13 "A It is based on the fact that this is a
14 complete unit for the manufacture of precision instruments
15 and --

16 "Q I am sorry, you misunderstood. I am
17 asking you, Mr. Thaler, where did you derive the information
18 which led you to say that American manufacturers would pay
19 premiums, did you consult any American manufacturers?

20 "A From my own experience. We know that
21 at our auction sales manufacturers who attended were willing
22 to pay premiums for individual machines but if they wanted
23 a complete unit for the production of precision instruments
24 or fuses this was an intact plant, that they could push a
25 button and get it started and they would be very pleased

A-1527

"to have had an opportunity to buy such a plant without having to spend years in accumulating the equipment.

"Q When you say that your experience at your auction sales persuaded you that manufacturers did or would pay premiums for individual machines you are talking about premiums over your appraised values?

"A Premiums beyond any appraised values.

"Q Did you, in fact, Mr. Thaler, consult with any American manufacturers to determine whether they would pay premiums for individual pieces of this equipment or for all of the equipment?

"A I had no reason to consult with anybody.

"Q You did not consult with anybody?

"A No.

"Q And Mr. Haakenson did not tell you what American manufacturers would pay premiums?

"A No.

"Q Did you tell Mr. Klein or -- did you at any time tell Mr. Klein or anyone else in Ajax that part of the basis of your appraisal or at any rate part of the basis of some of the statements which you made in your communications were statements which were made to you by Mr. Haakenson?

"A No.

2 "Q You did not at any time indicate to
3 anybody in Ajax, in the Ajax Company, that you were relying
4 upon Mr. Haakenson's statements?

5 "A In connection with what?

6 "Q In connection with statements like state-
7 ments in the telegram from which I quoted.

8 "MR. BERMAN: Can you point to a statement that you
9 quoted, there were several different statements there.

10 "Q Well, for example you said in your tele-
11 gram of August 17th that the machinery is mainly of Swiss
12 manufacture and is not available to American manufacturers
13 unless they are members of the trust and even then the
14 delivery of this type of machinery takes between two and
15 three years. Did you ever tell anybody in the Ajax Company
16 that those statements were based upon what Mr. Haakenson
17 had told you?

18 "A No."

19 Continuing on page 159, your Honor, line 14 -- I
20 will skip that and proceed to page 164, your Honor, line 22:

21 "Q You knew, did you not, that Ajax wanted
22 a quick appraisal and you knew that they were waiting for
23 the appraisal?

24 "A (Witness shakes head.)

25 "MR. BERMAN: Answer verbally instead of shaking your

A-1529

1 Jq/lf

Thaler

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2 "head.

3 "A Yes.

4 "Q You knew those things, did you not?

5 "A Yes. I did.

6 "Q Did you also know that they were going
7 to rely upon your appraisal in some course of dealings that
8 they had with Time & Micro?

9 "A Yes."

10 MR. STREAM: I would like you to read the next
11 question and answer.

12 MR. BRILL:

13 "Q But you were not absolutely certain you
14 say as to what that transaction with Time & Micro was going
15 to be?

16 "A Yes.

17 "Q In this letter of August 23rd, Plaintiff's
18 Exhibit 2 for identification, Mr. Louis says and I quote" --

19 MR. STREAM: You have to identify to the jury what
20 that is.

21 MR. BRILL: Exhibit 7, your Honor.

22 THE COURT: It's in evidence as Exhibit 7.

23 MR. BRILL: Yes, sir.

24 "Q 'As Mr. Klein discussed with you, we
25 would also like for our own information what the equipment

A-1530

2 "'would bring'" --

3 MR. STREAM: Be good enough to read this statement
4 accurately from your own statement.

5 MR. BRILL: "'As Mr. Klein discussed with you, we
6 would also like for our own information what in your opinion
7 the equipment would bring under a forced sale;' did you
8 respond to that statement in any way denying that Mr. Klein
9 had discussed this question with you?

10 "A I didn't deny that this was a question
11 and I don't remember that question having arisen."

12 Page 168 -- I want to skip that, your Honor.

13 THE COURT: Give us the one you are going to read
14 then.

15 MR. BRILL: Page 180, line 17 -- and these questions
16 relate to Plaintiff's Exhibit 2. I want the jury to look
17 at the exhibit so they can follow the questions.

18 MR. STREAM: I don't know how the whole jury can
19 follow the exhibit while you read the testimony.

20 THE COURT: They can look at it afterwards.

21 MR. BRILL:

22 "Q Mr. Thaler, on Plaintiff's Exhibit 2 for
23 identification, which is this document, Plaintiff's Exhibit
24 2 on trial, let us take the first listed machine under the
25 one marked sold and crossed out. This is described as

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1 jq/lf

Thaler

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2 "Inventory number 5040, Hauser 2 spindle profile miller.

3 "A Yes.

4 "Q Is this the appraised value which you
5 gave to it, \$8,000?"

6 MR. STREAM: I object to the procedure. If the
7 witness were here the exhibit would be in front of the witness
8 and not the jury.

9 THE COURT: You can't do it that way. A lot of
10 things are unfortunate about trials but we have to have some
11 appropriate procedures.

12 MR. BRILL: I am attempting to make it easier for
13 the jury to follow.

14 THE COURT: They can read any of these exhibits
15 afterwards.

16 MR. STREAM: These little comments are so cute
17 and so improper.

18 THE COURT: Disregard all comments by counsel.

19 MR. STREAM: It suggests I don't want to make it
20 easy, he wants to make it easy for the jury. We are not on
21 trial in this case. Counsel forgets that.

22 THE COURT: Proceed without comment.

23 MR. BRILL: I wish both counsel would be instructed.

24 THE COURT: I have said so several times but you
25 are reading this and I don't want any of these differentiations

A-1532

1 Jq/lf

Thaler

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2 which sometimes have crept in with respect to your reading.

3 Go ahead and read. Time is passing.

4 MR. BRILL:

5 "Q Is this the appraised value which you
6 gave to it, \$8,000?

7 "A Yes.

8 "Q Marked in red?

9 "A Yes.

10 "Q I notice that there are other figures in
11 red, is that right?

12 "A Yes.

13 "Q The figure of \$8,000 which has been typed
14 there was stricken out and over it was written \$9,500. What
15 is that figure?

16 "A The replacement value.

17 "Q And that was your judgment of what the
18 replacement value in 1966 was, \$9,500?

19 "A I ascertained that the cost was \$9,500.

20 "Q How did you ascertain that?

21 "A I think it was in the discussion with
22 Mr. Haakenson about the value of the machine.

23 "Q Do you mean that Mr. Haakenson told you
24 that its replacement value was \$9,500?

25 "A \$9,500, yes.

A-1533

1 jq/lr Thaler 508
2 "Q And that was the only source?

3 "A (Interposing) May I add to that?

4 "Q Yes.

5 "A It could have been after I came back that
6 I made some inquiry in connection with this machine.

7 "Q It is your testimony then that you may
8 have written this figure of \$9,500 after you came back?

9 "A It is possible but not very likely.

10 "Q But at any rate the figure of \$8,000 which
11 was your appraised value that was written in the plant --
12 that was written on the plant in August 15th?

13 "A That was written in the plant, that is
14 right.

15 "Q What about this change in the figure of
16 \$6,000 which is listed in the column of market value for
17 watch?"

18 THE COURT: I don't get the question. I don't
19 know what you read. Read it as it is in the record.

20 MR. BRILL:

21 "Q What about this change in the figure of
22 \$6,000 which is listed in the column of market value for
23 watch, apparently you changed \$6,000 to \$8,000.

24 "A I did that because I thought that the
25 value was greater than \$6,000 for that machine.

A-1534

1 jq/lf

Thaler

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2 "Q And do you think you made that change in
3 the plant?

4 "A Yes.

5 "Q I take it that you based ~~that~~ determination
6 on your experience and your knowledge?

7 "A That is true.

8 "Q When you say that your belief was that
9 the value of that machine at that time was \$8,000, were you
10 estimating that value for use of that machine was watchmaking
11 equipment or in any other use that it might have?

12 "A In any other way that this machine could
13 be utilized.

14 "Q It was your considered and expert judg-
15 ment based upon your experience that if that machine were put
16 up in auction it would bring \$8,000?

17 "A I didn't say that.

18 "Q Well, what was your judgment?

19 "A That the value of that machine in-place
20 to make it a part of the entire unit was worth \$8,000.

21 "Q To make it a part of what entire unit?

22 "A Of the entire manufacturing unit of Time
23 & Micro.

24 "Q I thought you had said that your judgment --
25 that it was worth \$8,000 for any use.

A-1535

1 Jq/lf

Thaler

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2 "A When I say any use I mean mechanical use."

3 Page 184 following the colloquy of counsel at line
4 11:

5 "Q You say that you attached the value or
6 you indicated a value of \$8,000?

7 "A Yes.

8 "Q For that machine?

9 "A Yes.

10 "Q In what sense was that machine worth
11 \$8,000, how could anybody get \$8,000 for that machine?

12 "A (No Response)

13 "MR. BERMAN: Answer the question.

14 "Q Mr. Thaler, you say the machine is worth
15 \$8,000.

16 "A Yes.

17 "Q Under what circumstances is it worth
18 \$8,000?

19 "A In-place and in use as delivered in
20 New York to the plant and ready for operation. This is a
21 part of the plant in its entirety as a useful machine. This
22 is one of the machines that made the plant as useful as it is
23 or was, usable instead of useful.

24 "Q How did you arrive at that value?

25 "A Well, I established a value based on what

1 Jq/lf

Thaler

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2 "it cost new and --

3 "Q How did you know what it cost new?

4 "A Or rather the replacement value which
5 was indicated on this list by Mr. Hirschmann's company.

6 "Q In other words, you arrived at the value
7 of \$8,000 as the present 1966 value of this machinery by
8 taking the replacement value of \$8,000 which Mr. Hirschmann
9 had indicated in 1964?

10 "A Yes.

11 "Q And what operation did you do with that
12 replacement value in order to arrive at the final figure of
13 \$8,000? If I may clarify it, the Hirschmann replacement value
14 is indicated as \$8,000, is that correct?

15 "A Yes.

16 "Q Did you simply assume that in 1966 that
17 machine would similarly be worth \$8,000?

18 "A The demand for that machine then was as
19 great as it was in 1966-1964.

20 "Q How did you ascertain that?

21 "A Because in principle there was a great
22 demand for machinery and there was no change or depreciation
23 in values in the two years since the appraisal made by Mr.
24 Hirschmann.

25 "Q There was a great demand for any machinery?

1 Jq/lf

Thaler

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2 "A Any machinery.

3 "Q Then is it your testimony, Mr. Thaler,
4 that in making this appraisal you simply assumed that any
5 replacement value which Mr. Hirschmann had indicated in 1964
6 continued to be the fair market value of all of the machines
7 that Mr. Hirschmann had appraised because there was a great
8 demand for all kinds of machinery?

9 "A Yes.

10 "Q And that was the basis upon which this
11 appraisal was made?

12 "A I knew from other sales that we had con-
13 ducted that we had a great response to all of our sales by
14 buyers who were willing to pay top prices for machinery.

15 "Q Are you talking about auction sales?

16 "A I am talking about the market.

17 "Q Yes, are you talking about auction sales?

18 "A Or liquidation.

19 "Q Or liquidation?

20 "A Fire or liquidation.

21 "Q And, therefore, you were assuming that
22 any machine or any good machine which was worth \$8,000 in
23 1964 would continue to be worth at least that?

24 "A I assumed that.

25 "Q In the view of your experience in your

1 Jq/lf

Thaler

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2 "auction sales?

3 "A And liquidation.

4 "Q And liquidation?

5 "A Yes."

6 THE COURT: You see, you repeat there again. You
7 can save a little time here and there but you apparently can't
8 seem to see that but go ahead. There is no use in my trying
9 to get you to see it apparently.

10 MR. BRILL:

11 "Q As a matter of fact, Mr. Thaler, you
12 never knew the original cost of those machines, did you?

13 "A Not accurately.

14 "Q In any way?

15 "A Yes, I knew that they were all small
16 machines and that they were very costly.

17 "Q Did you know the specific original cost
18 of any of these machines on this inventory?

19 "A No.

20 "Q And you made no inquiry about that?

21 "A I didn't have --

22 "MR. BERMAN: Just answer the question.

23 "A I made no inquiry."

24 Page 188, line 22:

25 "Q Now, Mr. Thaler, on the same first page

"there is a machine listed as inventory number 5500, a micron horizontal single spindle profile miller, I think it is.

"A Yes.

"Q You valued that at \$3,000, is that correct?

"A That is right.

"Q How did you arrive at that figure?

"A Only what I saw on the condition of the machine, that it was and I thought in my best judgement that the machine was worth \$3,000.

"Q What did you base that on?

"A My own general knowledge of machinery.

"Q Was that based upon your general knowledge that a purchaser would pay \$3,000 for that, did you have knowledge that there was any general purchaser or any group of purchasers or any specific purchaser who would be willing to pay \$3,000 for that machine?

"A This value was --

"MR. BERMAN: Read the question back, please."

"(Question Read)

"A I didn't know of any such purchaser at the time.

"Q Did you make any inquiry about whether there was anyone or whether there was likely to be anyone who

1 Jq/lf

Thaler

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2 "would be willing to pay \$3,000 for this machine, inventory
3 number 5500?

4 "A No.

5 "Q Did you have any knowledge about where
6 such a machine could be used?

7 "A Not specifically.

8 "Q Did you have any knowledge at that time
9 of what kind of market demand there was for this specific
10 machine?

11 "A No.

12 "Q Now, Mr. Thaler, in the Hirschmann table
13 the indicated replacement value for the machine with inventory
14 number 5500 was \$5,000.

15 "A Yes.

16 "Q Why did you value that machine at only
17 \$3,000?

18 "A It could have been particularly for the
19 reason that the machine's condition was not as I would expect
20 it to be worth \$5,000.

21 "Q You don't have any specific notation,
22 though, about whether that machine was in good condition or
23 bad condition?

24 "A It is indicated by the fact that I
25 devalued it.

A-1541

2 "Q And you think that that is the reason
3 that it must have been in poor condition?

4 "A That is right.

5 "Q In other words, your testimony is that
6 if this machine had been in excellent condition you would
7 have valued it at \$5,000?

8 "A Or thereabouts.

9 "Q Or approximately the same amount which
10 Hirschmann had valued it at in 1964?

11 "A Yes.

12 "Q Did you follow that procedure with other
13 machines listed on this inventory?

14 "A That was the purpose of my inspection to
15 each machine.

16 "Q In other words, the purpose of your inspec-
17 tion of each machine was simply to see whether it was in
18 excellent, fair or good condition and based upon your determi-
19 nation of the condition in which the machine was you valued
20 it at either the same amount that Hirschmann had valued it
21 at or a lesser amount if it was in poor condition?

22 "A That is correct.

23 "Q Is that the procedure that you followed
24 throughout the appraisal?

25 "A That is right."

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1 Jq/lf

Thaler

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2 "Q Did you have any judgment about whether
3 if a watchmaking plant wanted to buy one of these Hauser
4 2 spindle profile millers for use in the plant the value of
5 that machine would be more, less or the same as the value
6 which you indicated here as the market value for watch?

7 "A The value that I indicated here was
8 again based on the value of that machine.

9 "MR. GARTNER: That is not the question, read the
10 question back, please.

11 "A The answer is no.

12 "Q Does that mean that you had no judgment?

13 "A I didn't give it any consideration.

14 "Q You did not give it any consideration?

15 "A No, I did not.

16 "Q What would the value of one of these
17 machines be on the assumption that someone wanted to buy
18 that particular machine for a watchmaking plant?

19 "A That would depend on the market conditions
20 at the time.

21 "Q And you had no idea at the time you made
22 this appraisal of what the market conditions were?

23 "A I didn't think in those terms at the
24 time.

25 "Q I would like a yes or no answer. Did you

A-1543

2 "have any idea at the time -- did you have any idea at the
3 time of what the market conditions were for those machines?

4 "A Only that they were desirable machines.

5 "Q But you had no idea at all of what the
6 market demand was for any particular machine -- you had no
7 idea at all"--

8 MR. STREAM: If counsel would stop trying to work
9 with emphasis he could get the answers through much quicker.
10 You are not on the stage.

11 MR. BRILL:

12 "Q But you had no idea at all of what the
13 market demand for any particular machine on this list was?

14 "A The demand was good.

15 "Q With respect to a particular machine, with
16 respect to this Hauser 2 spindle profile miller, did you have
17 any idea of what the market demand was for that machine?

18 "A The market demand for precision machines
19 was good at the time.

20 "Q For that machine, not for precision machines,
21 I want to know with respect to this machine.

22 "A This is only one part of precision machinery.

23 "Q This particular machine, Mr. Thaler, did
24 you have any idea of what the market demand was for this
25 particular machine?

1 Jq/lf

Thaler

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2 "A The market for this and any other precision
3 machine was good.

4 "Q Do you mean the market demand?

5 "A Yes, the market demand for this and other
6 machines at the time was good.

7 "Q On what did you base that judgment?

8 "A That in general --

9 "Q I am referring specifically to the Hauser
10 2 spindle profile miller.

11 I can't answer that question because I
12 didn't make any investigations as to whether a Hauser, one
13 Hauser machine had a particular -- whether there was any
14 greater demand for a Hauser machine than any other machine or
15 less.

16 "Q You had no specific knowledge about
17 market demand for this particular machinery?

18 "A No, only in general that there was a
19 demand for all machine tools, particularly precision machines.

20 "Q Well, now, Mr. Thaler, you are an expert
21 appraiser and you say that it was your judgment that this
22 machine, this Hauser 2 spindle profile miller had a market
23 value for watch in-place, in-plant of \$8,000?

24 "A Yes.

25 "Q As an appraiser I am asking you your judgment

A-1545

as an appraiser, what would your judgment be about the value of that same machine in terms of the price which it would command from a buyer who wanted to use that machine in a watchmaking plant?

"I have no judgment."

THE COURT: Wait a minute.

MR. BRILL:

"Q You have no judgment at all?

"A No."

THE COURT: Again you repeat. Go ahead, though. Not only once but twice. Go ahead.

MR. BRILL:

"Q And you had no judgment about that at the time that you made this appraisal?

"A I didn't give it any consideration."

Page 212, your Honor:

"Q Mr. Thaler, when did you start to prepare this typed appraisal which is Plaintiff's Exhibit 12 for identification, that is Plaintiff's Exhibit 6 in evidence?

"A Upon my return from Strasburg.

"Q Immediately upon your return from Strasburg?

"A It may have been the next day or the following day.

"Q It was either August 16th or August 17th.

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1 Jq/lf

Thaler

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2 "A Or thereabouts.

3 "Q Did you get any specific request to prepare
4 this appraisal?

5 "A We do that regularly, this is our appraisal,
6 our written appraisal.

7 "Q In other words, this is what you are hired
8 to do?

9 "A Right.

10 "Q In this case by Ajax, this document
11 Plaintiff's Exhibit 12 for identification?

12 "A Right.

13 "Q And your telegram which is Plaintiff's
14 Exhibit 4 for identification was simply an interim statement
15 of your appraisal because they wanted a quick answer?

16 "A That is correct.

17 "Q When you were preparing your notes on
18 August 15th on Plaintiff's Exhibit 2 for identification,
19 that is Exhibit 2 in evidence, you indicated a value of
20 \$4,000 as the market value for watch, for mach es which
21 had inventory numbers 5503, 5504, 5505 and 5502 and in so
22 doing you changed the indicated market value for a watch of
23 \$3,000 which had been on the Hirschmann report. On what
24 basis did you make that change?

25 "A On the visual condition of the machine. I

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2 "thought it was in good condition and, therefore, it was
3 worth more.

4 "Q These machines on which you checked the
5 inventory numbers, they were the same machines which Hirsch-
6 mann had indicated in 1964 were in its judgment worth \$3,000?

7 "A In my judgment, however, as being respon-
8 sible only as it concerned my own judgment I put this value
9 on it.

10 "Q And you also put the same value on it
11 as the fair market value in the last column, isn't that
12 correct?

13 "A As it concerned the entire equipment in
14 the plant in use."

15 Skipping some of these questions which would be
16 incomprehensible without the jury examining the document --

17 THE COURT: What question are you talking about?

18 MR. BRILL: Skipping to line 19, your Honor:

19 "Q What is this machine used for, this
20 micron horizontal single profile miller?

21 "A A profile means the exterior of a form
22 where they mill, it is to mill a form, profiling is what it's
23 called.

24 "Q Would it have any use in a plant which
25 was not making watches?

1 Jq/lf

Thaler

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2 "A Yes.

3 "Q What kind of plant would it have a use
4 in?

5 "A In any plant where they did precision
6 work of the nature for which this machine was designed.

7 "Q It might be used in any number of machine
8 shops?

9 "A No, it would be used only in plants where
10 they did instrument work, fuse work or watchwork or any work
11 of that particular nature.

12 "Q When you say 'of that particular nature,'
13 what is the nature?

14 "A Small precision work.

15 "Q It is used for small precision work?

16 "A Yes.

17 "Q Would a machine of that type have less or
18 equal or greater value in a plant which had a need for it which
19 was not a watchmaking plant?

20 "A It would be less.

21 "Q Why would it be less?

22 "A Because this valuation that I made was
23 again a part of the entire unit of the plant as an integral
24 part of the plant.

25 "Q You may not have understood my question.

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2 "I am assuming that this would be part of an integral plant
3 of another kind, that it would be brought into a plant where
4 it would be just as useful as it would be in a watch plant.
5 Would it have less value there?

6 "A Yes, it would have a different value because
7 there the value would be based on its secondhand value as
8 against the value in this plant for the production as they
9 used it of watch movements.

10 "Q These were all secondhand machines,
11 weren't they?

12 "A Yes."

13 Page 219, your Honor, line 23:

14 "Q Were you familiar with the Hirschmann
15 Corporation in 1966?

16 "A No.

17 "Q You had never heard of them before?

18 "A I had heard of them but I had never had
19 any connection with them -- I never had any contact with them.

20 "Q How had you heard of them?

21 "A Well, they are in the machine tool field,
22 importers of Swiss and German machines.

23 "Q Is that all you knew about them?

24 "A That is all.

25 "Q You knew none of the principals?

1 Jq/lf

Thaler

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2 "A I knew nothing of any of the principals.

3 "Q Did you in 1966 talk to anyone associated
4 with the Hirschmann Company?

5 "A No, I did not.

6 "Q Did anyone in your company do that?

7 "A Not to my knowledge.

8 "Q Can you remember when you first heard about
9 the Hirschmann Corporation?

10 "A When I had this report, oh, you mean when
11 I first had the -- over the years we know the dealers in
12 different areas of different machine tools, we know the names.

13 "Q You knew the name but you knew very little
14 else about the company?

15 "A Only that they were importers of Swiss and
16 German machines.

17 "Q Did you know anything about their reputation
18 as appraisers?

19 "A Specifically, no.

20 "Q Had you ever had occasion to do business
21 with them?

22 "A No.

23 "Q Or your firm, did your firm ever do
24 business with them?

25 "A Not to my knowledge."

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2 Page 222, line 11:

3 "Q Isn't it true, Mr. Thaler, that machines
4 become obsolete, that a machine which may be worth \$16,000 in
5 one year may two years later be worth only its scrap value?

6 "A It's true.

7 "Q Did you make any inquiry with respect to
8 what the market demand for the Gruen recess and boring machine
9 was in August of 1966?

10 "A No.

11 "Q Did you make any inquiry as to whether there
12 was any ready market for such a machine?

13 "A No.

14 "Q There is listed on the inventory a builder
15 type 1 profile miller bench. Apparently you changed the
16 market value for watch from \$6,000 to \$7,000, is that correct?

17 "A Yes, I did.

18 "Q Was that done for the same reason that
19 you changed --

20 "A Any of the other figures -- yes, any
21 of the other figures.

22 "Q And would the same reason that you have
23 given with respect to the items about which I have questioned
24 you apply, namely that where you examined the machine and
25 thought that its condition warranted it you revalued the

1 Jq/lf

Thaler

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2 "market value for a watch upward?

3 "A Yes.

4 "Q And that would apply in every case where
5 the figure in that column has been increased by you in this
6 inventory?

7 "A Yes."

8 227, your Honor, line 13:

9 "Q Inventory number 5220 is a Waltham
10 pallet milling machine which you apparently valued another
11 at \$1,500, is that correct?

12 "A Yes.

13 "Q How did you arrive at that value?

14 "A Which machine are you talking about?

15 "Q Here.

16 "A The Waltham.

17 "Q The Waltham pallet machine, yes.

18 "Q I was able to make a determination as to
19 what constituted that machine and I put a value on it of
20 \$1,500.

21 "Q What do you mean when you say as to what
22 constituted that machine?

23 "A How big it was, whether it was a highly
24 precision machine or whether it was just an ordinary machine
25 tool and what was the condition of it and I based it on what

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1 Jq/lr

Thaler

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2 "Q

3 Did the fact that this machine was adaptable
4 for general use enter into your evaluation of its value
5 at \$1,500?

6 "A

7 The fact that it was in this plant and
8 could be used for the purpose for which it was intended in
9 this plant, that is what determined my value.

10 "Q

11 And you gave no thought to anything else?

12 "A

13 No."

14 230, line 20:

15 "Q

16 These figures in the last column under the
17 heading 'Spec. Ref.' they were your appraised figures, aren't
18 they?

19 "A

20 Yes.

21 "Q

22 It is in the last column of all these
23 pages?

24 "A

25 Yes.

"Q

That heading had no significance to you,
did it, 'Special Reference'?

"A

No.

"Q

In other words, when you got these sheets
that last column is blank and you simply used that as the
place for putting your figures?

1 Jq/lf

Thaler

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2 "A Yes."

3 Page 232, your Honor, line 13:

4 "Q What about the item which is listed as
5 inventory number 5390, Besser B.H. 60 ton press R.P.D., what
6 does that machine do?

7 "A That is a press that is used for blanking
8 and punching.

9 "Q Does that have general application?

10 "A Yes.

11 "Q And you valued that at \$25,000?

12 "A Yes.

13 "Q Would that machine have brought \$25,000
14 in your judgment on the market at that time?

15 "A I didn't give that any consideration as
16 to what it would bring.

17 "Q Did you give any consideration as to
18 what a buyer would be willing to pay for that machine inventory
19 number 5390 if Time & Micro were willing to sell it?

20 "A No, I did not."

21 236, line 3:

22 "Q What about inventory numbers 5060 and
23 69, micron semiautomatic lathe, you changed the market value
24 for watch which had been assigned by Hirschmann from \$3,000
25 to \$4,000 each, what was the basis for that?

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"A That upon examination of these machines
by me and in my judgment they were in excellent condition
and were worth the value that I placed on them.

"Q Those machines, those micron semiautomatic lathes, would they have general application or use in any general machine shop?

"A No.

"Q Where would they be useful?

"A In shops where they did precision work.

"Q But they might be used in shops where they did precision works in watchmaking or fusemaking?

"A Yes.

"Q Did you have any judgment about what those machines were worth on the market?

"A My judgment was not concerned as to the
market.

"Q Did you have any judgment in that regard,
Mr. Thaler?

"A No.

"Q Did you have any idea about what a buyer would pay for those machines or for each of those machines if Time & Micro were willing to sell them?

"A Not without looking into the market at this time to see what they would bring on the market today.

1 Jq/lf

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2 "Q You mean at the time?

3 "A Yes.

4 "Q Did you look into the market then?

5 "A I didn't consider it from that point of
6 view at the time.

7 "Q You didn't look into the market to see
8 what the market would bring?

9 "A No.

10 "C On those machines or any others in this
11 inventory?

12 "A That is true."

13 May I ask how far your Honor wants to go before
14 lunch?

15 THE COURT: I want to go until a quarter of one
16 today. We have to finish this thing some day. This, of course,
17 is not exactly a very interesting thing.

18 MR. BRILL: I think it's up to the jury to decide
19 whether or not it's relevant to the case.

20 THE COURT: They will be ultimately told that.
21 You may disregard that now. The Court will charge you fully.
22 You don't have to forecast what the Court may or may not
23 charge.

24 MR. BRILL: I realize it's very tedious a thing
25 for the jury to listen --

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2 THE COURT: Go ahead and stop comment. You interrupt
3 the flow of this.

4 MR. BRILL: It's prejudicial to state that it's
5 not interesting, your Honor.

6 THE COURT: I don't think it's very thrilling.
7 Maybe you do, I don't. It's for the jury to decide the fact.

8 MR. BRILL: I think it's significant.

9 THE COURT: They are not to make any decisions as
10 to interest. I am trying to suggest that we ought to try to
11 get through. Proceed. We will stop at a quarter of one.

12 MR. BRILL: Page 238, line 9:

13 "Q Mr. Thaler, if these appraised values
14 which you gave in the last column of these pages represented
15 the value of the piece of equipment as part of the plant
16 in-place and in use, why did you add 15 percent for additional
17 in-place value?

18 "A This represented the cost of crating the
19 machines at the source from which they came abroad. The
20 carting of these machines from their source to the pier,
21 the transportation insurance of these machines from Europe
22 to the United States, the transportation of these machines
23 from the pier to the plant, the removal of the crates from
24 the bases, from the skins of the machines, also removing the
25 skids, placing the machines on the floor and possibly having to

2 "A In each case I evaluated the giving
3 consideration to the fact that it was in New York and it didn't
4 take much to arrive at a figure. I didn't have to use a
5 calculating machine to add what I thought it was worth as
6 premium to have it here.

7 "Q Well, now, I am not asking you whether you
8 had to use a calculating machine, Mr. Thaler, I am asking
9 you whether in each case you arrived first at a judgment of
10 which it was worth before you added on the increment of 10
11 or 15 percent or whether you did it all in one step.

12 "A I did it all in one step.

13 "Q You did it all in one step."

14 THE COURT: You say that all over again after he
15 already said so. That is the repetition which goes on time
16 after time.

17 MR. BRILL: I will attempt to avoid it, your Honor.

18 THE COURT: You should have avoided it in the beginning.

19 MR. BRILL:

20 "Q Do you know in each case whether you added
21 10 percent or 15 percent or 20 percent?

22 "A No, I can't say for each specific machine
23 how much I added but I used my judgment as to what a machine
24 like that landed in New York without having to go through the
25 process of being a member of the syndicate and so forth, what

2 "It would be worth to acquire in these states in addition
3 or as a premium.

4 "Q In other words, this appraised figure
5 which you gave on Plaintiff's Exhibit 2 for identification
6 represented your one-step judgment of what that particular
7 machine was worth landed in New York?

8 "A That is right."

9 Page 250, your Honor, line 5 -- I am going to skip
10 that, your Honor.

11 THE COURT: All right.

12 MR. BRILL: Page 254.

13 "Q When Mr. Klein told you that he wanted
14 you to do this appraisal at Time & Micro you accepted that
15 assignment on the assumption and with the understanding that
16 Mr. Klein expected that you were qualified to do that kind of
17 appraisal?

18 "A I would assume so.

19 "Q And you accepted that assignment on that
20 basis?

21 "A That is right.

22 "Q That you were going to do it as a pro-
23 fessional appraiser and use your best professional judgment
24 and experience?

25 "A Yes, sir.

1 Jq/lf

Thaler

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2 "Q In making the appraisal?

3 "A Yes.

4 "Q Is it customary, Mr. Thaler, for you in
5 making appraisals to determine the marketability of particular
6 items to inquire about the state of the market at the particular
7 time that you are making the appraisal?

8 "A That depends on the type of equipment that
9 I appraise.

10 "Q If it is equipment with which you are
11 familiar, would you make inquiries about what the market
12 demand for that equipment is?

13 "A I certainly would.

14 "Q How would you go about making such inquiries
15 in the course of your normal work as a professional appraiser,
16 would you call one or two or ten different possible customers?

17 "A I would call people who are qualified
18 or who are specialists either in selling or buying this type
19 of equipment or a manufacturing plant where they use this
20 type of equipment to see how many plants were in the country
21 that could utilize this type of equipment.

22 "Q How many such calls would you make
23 normally?

24 "A I could get a pretty good perspective of
25 the market by consulting two or three people and sometimes if

2 "it were one substantial one I would go along with what he
3 was saying.

4 "Q Would you consult any used machinery manuals
5 or anything of that kind?

6 "A Yes, I could do that, too, I would do that,
7 too.

8 "Q You would do that normally?

9 "A Yes.

10 "Q In the course of the discharge of your
11 obligation as a professional appraiser?

12 "A Yes, somebody that specializes in this
13 particular equipment."

14 Does your Honor have the next volume of this
15 deposition?

16 THE COURT: Let's finish this one. Are you through
17 with this volume?

18 MR. BRILL: Well --

19 THE COURT: Yes or no? Can you decide that?

20 MR. BRILL: My next question occurs in page 293 in
21 Mr. Thaler's deposition.

22 THE COURT: I asked you if you were through with
23 this volume and you say yes. We will recess at this time.
24 Two o'clock today, please.

25 (Jury left the courtroom)

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Ajax vs. 1 jq/lf
Industrial Plants
Judge Levett 2
1/7/75
69 Civ. 1900 3

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AFTERNOON SESSION

2:00 p.m.

(Robing room conference)

THE COURT: Is Mr. Sinclair here?

MR. BRILL: Yes, he is here.

THE COURT: All right. I have requested and the reporter has made a copy of the transcript of the area in question. There was a distinct statement, Mr. Brill, to the effect that the papers were tampered with. You didn't say who did it, I will confess that.

MR. BRILL: Yes, your Honor --

THE COURT: Please stop interrupting me. You have a bad habit. This is what took place.

"MR. STREAM: I want you to take this sheet, I don't care if they are one-fifth the original size, I am interested in getting your opinion as to whether the data on these papers alone, which are marked Defendant's Exhibit J-1 for identification, recall to your mind that your company, whatever it is called -- the front sheet says appraised by George D. Sinclair and George Rossi, whether those pages jar your recollection that at least the data there set forth you saw before today?

"MR. BRILL: I object to questions on pages which are cut and tampered with."

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2 And then further proceedings were taken. Then
3 there was another statement. Mr. Brill made another objection.
4 Not content with one objection he made another.

5 "MR. BRILL: It is impossible for this witness to
6 identify something of his own which is tampered with if he
7 doesn't have the original to compare it."

8 Then I overruled that objection.

9 I don't think that this was an appropriate statement
10 which you made to state that the papers were tampered with.
11 How do you know they were tampered with? There was no know-
12 ledge on your part whatsoever. All you saw was that it
13 seemed to be a part of the total papers which was not material
14 at all, in my judgment. I suggest that you ought to be
15 willing to state -- I will read this if you want me to, as
16 to what you said in your objection in two spots and I
17 suggest that you ought to be willing to state that you had
18 no intention of charging Mr. Stream with any tampering. Will
19 you do that, sir? Yes or no, sir?

20 MR. BRILL: I will, your Honor, but I request that
21 we be allowed to put in the original for comparison.

22 THE COURT: That is another thing. That is a com-
23 pletely different thing.

24 MR. BRILL: I did not --

25 THE COURT: Will you or will you not? Otherwise I

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2 am going to tell them to disregard it. Which is it?

3 MR. BRILL: I will state that I did not -- you
4 might as well tell them, your Honor, to disregard my objection

5 THE COURT: I want an apology from you.

6 MR. BRILL: I did not accuse Mr. Stream of tampering
7 with them on the record. They were cut and they were changed
8 from the original.

9 MR. STREAM: I dare say and you did and you mentioned
10 my name at another point and even if you didn't the clear
11 innuendo is that I tampered with the exhibit because I was
12 the only one who handed it to the witness. If you are not
13 prepared to apologize I can't force it but I promise you if
14 you don't apologize I myself will send these papers to the
15 bar association because I won't stand for it.

16 MR. BRILL: The fair thing to do --

17 THE COURT: You're nonsensical. You are too
18 adamant about something which I think is a professional
19 obligation on your part.

20 MR. BRILL: I will apologize for any implication
21 from these statements which may have been read to accuse,
22 Mr. Stream of tampering with the documents.

23 THE COURT: That is just what I asked you to do.
24 I don't know why you fuss around so.

25 MR. BRILL: It's difficult for me. I am an inex-

2 perienced attorney compared with Mr. Stream and compared with
3 yourself.

4 THE COURT: I suggest you do it. It's the better
5 part of valor and the gentlemanly thing to do. It's agreed
6 that you will do that.

7 MR. BRILL: I will do that, your Honor. I request
8 that we now proceed to the next question.

9 THE COURT: I will if you wait. You are so impatient
10 with me and I resent it.

11 What is your application now with respect to Sinclair?

12 MR. BRILL: I just want to call him to the stand
13 for a brief minute or two.

14 THE COURT: What do you want to do when you call
15 him? You have to show some reason for it. You are asking to
16 open up his testimony.

17 MR. BRILL: You just want him to identify the
18 original appraisal which he did.

19 THE COURT: Is that all?

20 MR. BRILL: And to compare that appraisal to Exhibit
21 J and state which pages were not contained in Exhibit J and
22 which pages of Exjibit J were not a part of his original
23 appraisal. Those would be the only two questions.

24 MR. STREAM: My position is this: I never laid
25 claim at any point during the cross examination to the fact

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2 that that appraisal was complete. I said I assumed that it
3 isn't complete, I don't care if it's incomplete, I wanted
4 Mr. Sinclair's responses to one particular area.

5 THE COURT: Those will stand, sir. Have you got
6 the exhibits?

7 MR. BRILL: I have it outside.

8 MR. STREAM: If those statements are the same, then
9 I object to the introduction of them in evidence.

10 THE COURT: I understand.

11 Let the clerk mark this for identification.

12 Is that a copy?

13 MR. BRILL: This is a copy of Exhibit J.

14 THE COURT: I don't want that.

xxx 15 (Plaintiff's Exhibit 31 marked for identification.)

16 THE COURT: Will it be conceded, Mr. Brill, that
17 Exhibit J-1 which was admitted was a part of this exhibit?

18 MR. BRILL: No, your Honor, it won't. It's not.
19 Portions of J-1 are a part of that exhibit.

20 THE COURT: Listen to me again. I can't follow
21 your path of listening. Will you stipulate that J-1 was
22 a part of this Exhibit 31?

23 MR. BRILL: Portions of J-1 were not a part of 31.
24 Some of the pages attached to Mr. Stream's appraisal were
25 not part of Mr. Sinclair's appraisal.

MR. STREAM: How about J-1?

MR. BRILL: Was J-1 only the cut pages?

MR. STREAM: Yes, sir.

MR. BRILL: The cut pages were a part of Exhibit 31.

MR. STREAM: And the cut pages are Exhibit J-1 in evidence.

THE COURT: What will you stipulate then, put it in your words.

MR. BRILL: What I am offering --

THE COURT: I didn't ask you that, damn it.

MR. BRILL: I don't understand.

THE COURT: I want a stipulation about what these papers -- if they were a part of this, I think you ought to stipulate to the same.

MR. STREAM: I am going to make a suggestion to Mr. Brill. I am prepared to consent to the introduction of Plaintiff's Exhibit 31 in evidence without need for authentication upon the condition that counsel will stipulate that Plaintiff's Exhibit 31 contains the same pages which were formerly marked Defendant's Exhibits J and J-1 in evidence.

THE COURT: All right.

MR. BRILL: No, your Honor, because portions of J are not contained in Plaintiff's Exhibit 31.

MR. STREAM: Exhibit J is only the pages which bear the witness' initials, that is all, the first four pages. That is what Exhibit J is by the record. Exhibit J-1 is the sheaf of pages which you concede are a part of Plaintiff's Exhibit 31. The rest of the pages were never received in evidence.

THE COURT: The witness Sinclair identified certain ones with his initials and read as having been from the original appraisal, did he not?

MR. STREAM: Yes, sir, and I offered Exhibit J limited to those pages and I think Mr. Farley recalls that that statement was made.

MR. BRILL: I don't recall that.

THE COURT: You should recall it. You were there.

MR. STREAM: It's in the record.

MR. BRILL: My recollection --

THE COURT: I am not going to listen. It's too obvious. Mr. Stream and Mr. Brill, I reluctantly agree and consent to the recall for the limited purpose of presentation of the Sinclair testimony with respect to 31 but it will not in any way mean a re-examination with respect to his testimony of yesterday regarding J-1, do you understand me?

MR. BRILL: Yes, your Honor.

MR. STREAM: May I have the right when he introduces

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2 this document since he wouldn't accept my stipulation at
3 least to make clear through Mr. Sinclair that the pages which
4 I marked in Exhibit J and J-1 are indeed a part of Plaintiff's
5 31, can I do that?

6 THE COURT: I don't see any objection.

7 MR. BRILL: Yes.

8 THE COURT: I want this statement by you made
9 before this is done, do you understand me?

10 MR. BRILL: I will, your Honor. Does your Honor
11 wish me to read what I said yesterday?

12 THE COURT: No, I don't. Simply state --

13 MR. BRILL: I think it's only fair that I quote
14 exactly what I said.

15 THE COURT: I will mark what you said.

16 MR. BRILL: Just those two lines.

17 MR. STREAM: You said it twice.

18 MR. BRILL: Yes, the two occasions.

19 THE COURT: You said it on both pages. I want you
20 to refer to both. Do you understand me?

21 MR. BRILL: Yes.

22 THE COURT: I won't take any no for an answer.

23 MR. BRILL: I have another matter, your Honor.

24 THE COURT: What else?

25 MR. BRILL: I apologize but on Plaintiff's Exhibit

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2 30 there are certain red marks which were not on this exhibit
3 which were introduced at the last trial.

4 MR. STREAM: You introduced it today without reserva-
5 tion and I won't accept any comment unless the Court directs
6 me to.

7 THE COURT: I am not going back to this paper or
8 the testimony of this witness Sinclair in reference to
9 it and I am not opening this for any testimony by Sinclair
10 about those exhibits.

11 MR. STREAM: What counsel is doing now is talking'
12 about something else. This morning during the reading of
13 Mr. Thaler's deposition Mr. Brill had a choice in referring to
14 a telegram which Thaler had. He had a choice of not using it
15 and skipping references to it in his reading or introducing it
16 without condition and then being permitted to read questions
17 and answers from it. He elected to introduce this telegram
18 in evidence with no reservations and it was received in
19 evidence with no reservations. Now counsel says he would
20 like to make a couple of reservations.

21 MR. BRILL: That is not the point. I offered it
22 on the basis that when Mr. Stream handed it to me that it
23 was the same exhibit that was introduced at the last trial
24 but there are changes on it, your Honor.

25 MR. STREAM: Not at all. That was precisely the way

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2 it went in the last time.

3 MR. BRILL: I suggest we examine the copy from the
4 last trial. There are changes as is very plain.

5 MR. STREAM: The telegram is precisely the way it
6 was offered in evidence by counsel today and it isn't going
7 to be withdrawn unless the Court directs it.

8 MR. BRILL: There are two words underlined which
9 were not underlined at the last trial.

10 MR. STREAM: When that exhibit was offered this
11 morning by counsel it was in precisely that form and that is
12 the way it should stand. If he didn't want to offer he
13 didn't have to.

14 MR. BRILL: There was no way to compare it with the
15 exhibit at the last trial until the noon recess.

16 THE COURT: You offered it and you are bound by your
17 offer. That is that. Is there any other fracas that you
18 want to get into now? All right. I will say you have been
19 asked to make a statement.

20 (In open court - jury present)

21 THE COURT: Mr. Brill will make a certain statement
22 with respect to something said yesterday while Mr. Sinclair
23 was on the stand and at a time when a certain offer was made.

24 Will you state that?

25 MR. BRILL: Yesterday afternoon I stated during the

1 jq/lf

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2 cross examination of Mr. Sinclair that I object to questions
3 on pages which are cut and tampered with and later on --

4 THE COURT: You made a similar statement.

5 MR. BRILL: I made a similar statement that it is
6 impossible for this witness to identify something of his own
7 which is tampered with if he doesn't have the original to
8 compare it.

9 I apologize for any possible implication that Mr.
10 Stream had tampered with these documents.

11 THE COURT: All right. So be it and I, therefore,
12 instruct the jury to disregard the statements made by
13 Mr. Brill at that time. Application has been made by Mr.
14 Brill to recall for certain limited purposes Mr. Sinclair.
15 I do this reluctantly because I think each witness should be
16 finished with when the conclusion is first reached on his
17 testimony. However, I have granted this for a limited purpose
18 which has been stated to counsel.

19 All right.

20 G E O R G E S I N C L A I R, recalled as a witness
21 on behalf of the Plaintiff, having been previously sworn,
22 was examined and testified further as follows:

23 FURTHER DIRECT EXAMINATION

24 BY MR. BRILL:

25 Q Can you identify Plaintiff's Exhibit 31 for identifica-

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tion?

A Yes, sir, I can.

Q What is that document?

A This is the complete appraisal that I submitted on the Spread Eagle Farms Food, Incorporated, and the Spread Eagle Farms, Inc., to Mr. Harter of the Pennsylvania National Bank and Trust Company in Pottsville, Pennsylvania, on July 1, 1974.

MR. BRILL: I offer Plaintiff's Exhibit 31 in evidence, your Honor.

THE COURT: Show them to Mr. Stream.

MR. STREAM: May I please see J and J-1.

THE COURT: Yes. That was impounded this morning but it may be released temporarily.

He has to go to the clerk's office to get it.

MR. BRILL: I have a copy of it, your Honor, if it's acceptable.

THE COURT: Is it an identical copy?

MR. BRILL: Yes, it is, your Honor.

THE COURT: Can we get along with that or not?

MR. STREAM: Indeed so.

THE COURT: Impounding means just what it says.

MR. STREAM: May I have a voir dire?

THE COURT: Yes.

1 Jq/lf

Sinclair-Further Direct

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2 MR. STREAM: I will tell you what I will do, consented
3 to.

4 THE COURT: Mark it.

xxx

5 (Plaintiff's Exhibit 31 received in evidence.)

6 THE COURT: Mr. Stream is examining on cross examina-
7 tion.

8 MR. BRILL: I wanted to ask a question or two on
9 direct. I thought that was our understanding.

10 MR. STREAM: This witness was called simply to
11 authenticate the document.

12 THE COURT: I will stand by that.

13 MR. BRILL: And to compare it to Exhibit J and J-1.

14 THE COURT: There is no such indication.

15 MR. BRILL: Fine, your Honor.

16 MR. STREAM: That is all. No cross.

17 MR. BRILL: I have no questions if your Honor
18 will not permit a comparison for the two exhibits.

19 MR. STREAM: That is for the jury. I will take
20 care of that in summation.

21 THE COURT: What do you want to ask, if anything?

22 MR. BRILL: I want him to compare the documents and
23 tell us --

24 THE COURT: They speak for themselves and he was
25 examined at some length about the papers.

A-1575

2 MR. BRILL: I have one other question about Exhibit
3 J if your Honor will permit. That is about whether Mr.
4 Sinclair --

5 MR. STREAM: I object. No statements, please.

6 THE COURT: I don't think there is any arrangement
7 to go on with any further questions except the production of
8 this paper. That was the only purpose of it. I sustain the
9 objection.

10 MR. STREAM: The jury can make their comparison.
11 I will help them.

12 MR. BRILL: So will I, your Honor.

13 THE COURT: You each may attempt to help the jury.
14 That is all.

15 (Witness excused)

16 THE COURT: Go ahead with your depositions now. What
17 is the next volume? Do you want to read more? You are not
18 satisfied with the numerous pages you read this morning?

19 MR. BRILL: I am almost done.

20 THE COURT: Which ones are you referring to?

21 MR. BRILL: I am reading from the volume of testimony
22 of Mr. Thaler taken on February 4, 1970.

23 THE COURT: All right. What page?

24 MR. BRILL: I will read from page 293, lines 24
25 and 25:

2 "Q Did you examine the machinery or any of
3 the machinery during the auction?

4 "A No.

5 "Q Did you form any opinion about the con-
6 dition of the machinery?

7 "A It was in the same condition as when I
8 first observed it when I made the appraisal.

9 "Q Do you know whether the machinery that
10 was offered for sale at the auction consisted of the same
11 items that were listed on your appraisal or more or less items?

12 "A I believe they were all listed.

13 "Q All that were listed on your appraisal?

14 "A Yes."

15 THE COURT: That is another duplication but go on.
16 I can't expect anything else from you.

17 MR. BRILL: Page 298, line 12:

18 "Q Did you have any other communication with
19 him after that, that is Plaintiff's Exhibit 24 for identifica-
20 tion.

21 "A Yes, on February 27th I wrote this letter
22 to him.

23 "Q May I see it, please?

24 "A Yes. The letter is marked for identifica-
25 tion at the deposition as Exhibit 25.

2 THE COURT: Is it Exhibit 25 here?

3 MR. BRILL: I ask Mr. Stream if he has the original
4 of that letter that I may offer it into evidence now, otherwise
5 I will offer a duplicate.

6 MR. STREAM: What is the date?

7 MR. BRILL: February 27, '68. I believe the
8 original of this letter was offered at the last trial, your
9 Honor.

10 THE COURT: Never mind that. Give us the date.

11 MR. BRILL: February 27, 1968.

12 THE COURT: Your question in effect could be read
13 to be, "Did you have any other communication after that date?"
14 isn't it?

15 MR. BRILL: No, your Honor, this is simply identifi-
16 cation of this exhibit.

17 THE COURT: Ask your question.

xxx

18 (Plaintiff's Exhibit 32 marked for identification.)

19 MR. BRILL: I offer it.

20 MR. STREAM: I object. It's irrelevant and
21 immaterial.

22 THE COURT: Let's see the letter --

23 MR. BRILL: It deals with --

24 THE COURT: Let's see the letter, I said.

25 MR. BRILL: May I explain the relevance?

1 THE COURT: No, you may not explain the relevance,
2 I will read it.

3 MR. BRILL: The letter is an admission of the
4 defendant --

5 THE COURT: I am not asking you about the letter.
6 Keep quiet so I can think.

7 MR. BRILL: I am sorry, your Honor.

8 THE COURT: Sustained. I don't see any relativity
9 to this.

10 MR. BRILL: May I explain the relevance?

11 THE COURT: No, you may not. I have examined it
12 and I have ruled. I am not going to let you become a witness,
13 counsel.

14 MR. BRILL: I would be happy to explain it out of
15 the presence of the jury.

16 THE COURT: I refuse to let you explain it.

17 MR. BRILL: I make an offer of proof as to the
18 relevance which I am entitled to do under the rules.

19 THE COURT: Maybe you are in some cases. I don't
20 know why you are in this case, though.

21 MR. BRILL: I want to state on the record what
22 the relevance of this document is.

23 THE COURT: You are not going to. That is not a
24 proffer of proof, that is an argument.

2 Proceed with the next reading, please.

3 MR. BRILL:

4 "Q Did you have any other communication from
5 or to Ajax after the auction?

6 "A Yes.

7 "Q May I see it, please?

8 "A Yes.

9 "MR. GARTNER: Will you please mark a letter dated
10 February 29, 1968, as Plaintiff's Exhibit number 26 for
11 identification."

12 THE COURT: It was marked.

13 MR. BRILL: Yes, and I ask that it be marked
14 Plaintiff's Exhibit 33 for identification at this trial,
15 your Honor.

xxx

16 (Plaintiff's Exhibit 33 marked for identification.)

17 THE COURT: Do you offer that?

18 MR. BRILL: Yes, I do, your Honor.

19 THE COURT: Show it to Mr. Stream.

20 MR. STREAM: Objected to on the grounds that it's
21 irrelevant and immaterial.

22 THE COURT: Let me see it, sir.

23 MR. BRILL: May I state the relevance of this
24 document, your Honor?

25 THE COURT: No, you may not, and please don't.

2 The objection is sustained. It has nothing to
3 do with the issues in this case.

4 MR. BRILL: It does if your Honor will let me
5 explain.

6 THE COURT: I have ruled. I ask the jury to
7 disregard anything you say further and furthermore I direct
8 you to say anything about it.

9 Do you understand me? It's in plain language.
10 There has to be an end and a determination. Go on with --

11 MR. BRILL: It's unfair not to give counsel the
12 opportunity to argue this at the side bar.

13 THE COURT: Disregard that. If you say anything
14 more we will have to stop and do something else.

15 Come on. Proceed as indicated.

16 MR. BRILL: Continuing on page 299 and 300, your
17 Honor, line 11 of page 299:

18 "Q Do you have another letter?

19 "A Yes.

20 "MR. GARTNER: Mr. Thaler has produced another
21 letter from himself to Mr. Louis dated March 8, 1948, marked
22 for identification at the deposition," and I ask that it be
23 marked for identification at this trial.

24 THE COURT: Very well.

25 (Plaintiff's Exhibit 34 marked for identification.)

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xxx

2 MR. BRILL: I offer it, your Honor.

3 THE COURT: Show it to Mr. Stream.

4 MR. STREAM: Objected to, irrelevant and immaterial.

5 MR. BRILL: I call your attention to the second
6 and next to the last paragraph --

7 THE COURT: I want these remarks stopped. I will
8 look at it. I insist.

9 MR. BRILL: I am directing your attention --

10 THE COURT: I won't hear anything else about it.
11 I will look at it. It's my duty to look at it.

12 Objection sustained. This is irrelevant. Go on
13 now with the next question, please.

14 MR. BRILL: At the bottom of page 299, and this is
15 not a question so much as colloquy of counsel --

16 THE COURT: Then don't give it.

17 MR. BRILL: It's identification of a document
18 which I intend to mark at this trial.

19 THE COURT: I don't know what you are talking
20 about at all. Read the questions and go ahead. Colloquy
21 is not a part of the necessary reading.

22 MR. BRILL: I ask that Plaintiff's Exhibit 17 at
23 the last trial be marked for identification as Plaintiff's
24 Exhibit 35 at this trial.

25
xxxx

(Plaintiff's Exhibit 35 marked for identification.)

A-1582

2 THE COURT: Show it to Mr. Stream, please.

3 MR. STREAM: I will consent that this be received.

4 THE COURT: Mark it.

5 MR. STREAM: I would like to see the original
6 counterpart received.

7 THE COURT: Do you have the original?

8 MR. STREAM: Yes, sir.

9 MR. BRILL: Can I examine the original?

10 THE COURT: Have you the original?

11 MR. BRILL: Mr. Stream had it and I consent it
12 be marked 35-A for identification and 35-A in evidence.

13 MR. STREAM: Just substitute the label.

14 MR. BRILL: Fine.

xxx 15 (Plaintiff's Exhibit 35 received in evidence.)

16 THE COURT: Well, this is in evidence and here it
17 is.

18 Go ahead with your questions.

19 MR. BRILL: Page 310, your Honor, line 10:

20 "Q As a matter of order and normal business
21 has Industrial Plants ever guaranteed the price of any
22 machinery?

23 "A Occasionally.

24 "Q What is your practice as far as the form
25 of the guarantee is concerned?

A-1583

"A We guarantee a certain minimum or floor figure.

"Q Have you been involved in any such guarantee

"A No.

"Q Do you have any knowledge of how that minimum or floor figure is fixed?

"A Usually it's fixed by the evaluation of the equipment and some figure below that as a minimum guarantee.

"Q Who makes the evaluation of the equipment?

"A Either Mr. Kriser or --

"Q Sidney Kriser?

"A Yes, Sidney Kriser or Botwinik.

"Q Who determines what the guarantee figure should be?

"A Mr. Kriser usually.

"Q Sidney Kriser?

"A Yes.

"Q Do you have any knowledge about how Industrial Plants or Mr. Kriser determines the guarantee figure in relation to the evaluated figure?

"A The evaluated figure is what the equipment would bring if sold at liquidation or public auction sale and then from that figure is deducted the cost of conducting such an auction sale or liquidation. Then the factor of a split

2 'beyond the minimum in the evaluation that was made. Some times
3 it's 50-50, sometimes 60-40, between the minimum and what
4 the machines bring net or the plant brings net.

5 "Q I am not sure that I understand that.
6 What do you mean by a split, let's go into specific figures.

7 "A All right. Suppose a plant is evaluated
8 at \$100,000.

9 "Q Yes.

10 "A That is what it is contemplated to bring.

11 "Q Yes.

12 "A It may cost \$7,500 to \$10,000 to put this
13 plant into such a condition that the machinery contained
14 therein can be marketed and sold, then there is a figure that
15 is established as to what normally, what the profits should
16 be since it's like an investment you are actually buying.
17 Sometimes the guarantee is made in such a manner between
18 Industrial Plants Corporation and the principal that after
19 the minimum guarantee there is a split of the proceeds.

20 "Q Between Industrial Plants and the principals?

21 "A Yes.

22 "Q Which split may be, 40-60 you say?

23 "A 40-60, 60-40 or less, it depends on what
24 the arrangements are.

25 "Q Using those figures that you have postulated,

A-1585

2 "the machinery being evaluated at \$100,000 and assuming that
3 it would take \$10,000 to prepare it for sale, what would be
4 the minimum guarantee which Industrial Plants would offer
5 to the principals?

6 "A In that case it would be, as I say,
7 \$100,000. It would be \$65,000, \$70,000 as the minimum
8 guarantee."

9 Line 25 of the same page:

10 "Q At the time that Mr. Kriser offered this
11 guarantee of \$350,000 to Mr. Klein in his letter of August
12 30, 1966" -- Plaintiff's Exhibit 22 for identification at
13 this deposition and Plaintiff's Exhibit 9 in evidence at
14 this trial -- "Had Industrial Plants arrived at any liquida-
15 tion value of the machinery at Time & Micro?

16 "A They undoubtedly must have in order to
17 have come up with the guarantee.

18 "Q As far as you know now at this moment,
19 nobody at Industrial Plants ever put a liquidation value on
20 this machinery?

21 "A No.

22 "Q That is the Time & Micro machinery?

23 "A That is right.

24 "Q Have you had any conversation with Mr.
25 Kaefer of Hirschmann Corporation about this case?

A-1586

2 "A I called him on the phone on a number of
3 occasions but he never responded to my call.

4 "Q You have never talked to him?

5 "A No.

6 "Q Has anybody from Industrial Plants talked
7 to him?

8 "A No."

9 THE COURT: Is that all?

10 MR. BRILL: That is all, your Honor.

11 THE COURT: That is all you are reading from any
12 of these depositions?

13 MR. BRILL: That is all from Mr. Thaler's deposition.

14 THE COURT: I mean Thaler.

15 MR. BRILL: Yes.

16 THE COURT: It's up to you, I suppose, Mr. Stream.

17 MR. STREAM: With your permission I will inform the
18 jury that the reason that Mr. Thaler is not here to testify
19 is that he is no longer connected with Industrial Plants and
20 is a resident of the State of Florida which is outside the
21 jurisdiction of this court.

22 MR. BRILL: I object to that statement as containing
23 a reason for him not being here. We agreed that he could
24 state the facts as to Mr. Thaler's residence.

25 THE COURT: He is in Florida.

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1	jq/lf	Thaler
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2 | hearsay.

3 THE COURT: It's not hearsay. It's prepared by
4 the witness and he referred to it in his examination.
5 Overruled.

XXX

6 (Defendant's Exhibit K received in evidence.)

7 MR. STREAM: I will reserve comment on it at this
8 time, your Honor.

Let's turn to page 30, please, line 9:

10 "Q Mr. Thaler, when did you first hear of
11 Ajax Hardware Manufacturing Corporation?

12 "A In 1966.

13 "Q What was the occasion?

14 "A I received a telephone call from a Mr.
15 Sax.

16 "Q Do you remember his first name?

17 "A I can't say I do, Louie Sax, perhaps, I
18 am not sure.

19 "S-a-x?

"A Yes, S-a-x.

"Q Were you in your office?

"A Yes.

"Q What was the conversation?

He informed me that they wanted an appraisal
of a manufacturing plant located in Strasburg, Pennsylvania,

A-1588

1 Jq/lf

Thaler

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2 "and would we do it and my answer was yes.

3 "Q Did you make arrangements to meet anybody?

4 "A Yes.

5 "Q To go ahead with the appraisal?

6 "A Yes, arrangements were made for me to
7 meet with a Mr. Klein, Howard Klein if I remember correctly
8 to discuss the proposed appraisal.

9 "Q Was that the next thing that happened
10 in this connection?

11 "A Yes.

12 "Q You met with Mr. Klein?

13 "A Yes.

14 "Q When did that occur?

15 "A Within three or four days after my conver-
16 sation or even less with Mr. Sax."

17 Now to page 35, line 16:

18 "Q What kind of appraisal did Mr. Klein
19 ask you to make?

20 "A The value of the plant in-place and ready
21 for operation, continued operation.

22 "Q Do you recall anything else in your con-
23 versation with Mr. Klein?

24 "A Yes.

25 "Q What was that?

A-1589

1 jq/lf

Thaler

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2 "A He impressed me with the urgency of doing
3 this appraisal because they were then in the process of
4 negotiation with the government for the production of
5 fuses.

6 "Q Who was in the process of negotiation?

7 "A Ajax.

8 "Q This was not Ajax plant, was it?

9 "A Not yet, I don't believe. I don't know
10 that part of it. Ajax was negotiating for the purchase --
11 sorry, Ajax was negotiating this contract with the government
12 to produce -- they wanted to know what the value of the
13 plant was as an operating business.

14 "Q Mr. Klein explained to you why it wasn't
15 necessary for them to know the value of the plant in connection
16 with their negotiations with the government?

17 "A I believe there was a question of financing.

18 "Q What sense was there a question of financing?

19 "A They were going to borrow money on the
20 strength of the dollar value that was placed on the plant.

21 "Q Ajax was going to borrow money?

22 "A Yes.

23 "Q Did you inquire of Mr. Klein or did he
24 tell you the relationship between Precision Time and Ajax?

25 "A The only thing that I knew was Ajax was

A-1590

1 Jq/lf

Thaler

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2 "acquiring this plant for Precision Time.

3 "Q Is that the purport of your recollection
4 of the conversation that you were told that Ajax was going
5 to engage in some sort of financing with respect to the
6 machinery of the Precision Time Company and that is why they
7 wanted the appraisal?

8 "A It was not only the machinery, it was
9 the plant in its entirety as an operation for the production
10 of fuses."

11 The top of page 38, line 2:

12 "Q Time and Micro was what?

13 "A The new name for Precision Time.

14 "Q The company to which you have been
15 referring as Precision Time?

16 "A That was the original name.

17 "Q It was then known as Time & Micro?

18 "A Yes.

19 "Q You say he, meaning Mr. Klein, told you
20 something about Mr. Haakenson?

21 "A He was to be there to be the man in charge
22 of production of the fuses, would accompany me to help me
23 because he was very familiar and knowledgeable with the
24 workings of a plant like that together with the machine tools
25 that were required to produce the fuses that they were

2 "negotiating to manufacture.

3 "Q You said that Mr. Klein said something
4 about being conscious of the shortness of the time allotted,
5 what do you mean by that?

6 "A That in order for me to do this appraisal

7 "Q I am sorry, you misunderstood me. What
8 was the time allotted and who allotted it?

9 "A It was moved up from approximately a week
10 to the next day, I believe, to make this appraisal. In other
11 words, they wanted this appraisal four or five days earlier
12 than my first discussion with Mr. Klein.

13 "Q Did this all occur at the same discussion
14 with Mr. Klein?

15 "A Yes.

16 "Q In other words, when you responded that
17 you had proposed to make the appraisal within a week --

18 "A Right.

19 "Q Mr. Klein asked you to make it earlier?

20 "A As a matter of fact, I recall now that he
21 called me and he said he would like to have this done the next
22 day. It was originally one week."

23 Now to page 43, your Honor, line 3:

24 "Q Is it your testimony that you were given
25 this by Mr. Klein," referring to Plaintiff's Exhibit 2 in

2 evidence, "Is it your testimony that you were given this by
3 Mr. Klein in the meeting in Mr. Shriro's office that you have
4 testified about?

5 "A Yes, to the best of my recollection.

6 "Q Was it handed to you or was there any
7 covering letter with it or anything like that?

8 "A I believe he handed it to me at the time
9 for the reason that I wanted time for the purpose of familiariz-
10 ing myself more with the type of equipment that was there
11 which would have required perhaps two weeks in order to be
12 able for me to come up with the proper prices, with the
13 market prices. So he said, 'We can help you with that. I
14 have an appraisal here which was made by Hirschmann and
15 Company. They are the importers of this equipment. They
16 handle this equipment. They are very qualified to establish
17 a value of this equipment,' and then he also said, 'We will
18 have to because of the shortness of time, we will have Mr.
19 Haakenson accompany you and you can rely on him because he
20 is very familiar with this equipment and this would save time
21 since we need this information very quickly.'

22 "Q Mr. Thaler, was Mr. Klein handing you
23 this exhibit as an appraisal or simply as a list of the equip-
24 ment which he wanted you to appraise?

25 "A It was a list of equipment and on it was

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2 "the appraisal made by this company.

3 "Q I understand that but did Mr. Klein tell
4 you that you should rely upon the appraisal which the other
5 people made?

6 "A He said we want this appraisal upgraded
7 and I can rely on the appraisal made by Mr. Hirschmann, I
8 forget his name, the president of the company.

9 "Q He told you you could rely on the
10 appraisal that was made by Mr. Hirschmann?

11 "A Yes, so that to save time, so as to save
12 time in establishing the value since it was more or less of
13 a special nature.

14 "Q What did he want you to do?

15 "A Upgrade it.

16 "Q What did that mean to you, upgrade?

17 "A To see whether the values as of the date
18 of my appraisal, what the value would be as of the date of
19 my appraisal.

20 "Q In other words, he wanted you to give him
21 your opinion as to what the value was as of the date of your
22 appraisal?

23 "A Yes."

24 Now to page 62, line 11:

25 "Q Mr. Thaler, have you given us your complete
A-1594

2 "recollection of your conversation with Mr. Klein that first
3 time in Mr. Shriro's office?

4 "A I think I have based on what I said. I
5 think there is nothing that I could add to it with the excep-
6 tion that he again reiterated the fact that he was most
7 anxious to have this done as quickly as possible and that he
8 would render all assistance based on the appraisal that
9 was made which I could rely on so as not to have to wait two
10 weeks or three weeks in order for me to ascertain certain
11 values, that I could rely on the information that he gave me
12 in respect to Mr. Hirschmann's appraisal as well as Haakenson's
13 appraisal, that these were qualified men, that in order to
14 expedite things that I should rely completely on what they
15 said.

16 "Q As I understand it at the meeting in
17 Mr. Shriro's office your offer was to conduct the appraisal
18 within a week or begin the appraisal within a week?

19 "A Yes.

20 "C And when that meeting had concluded that
21 was the basis upon which you left it -- I am sorry, I will
22 say it over again. And when that meeting had concluded that
23 was the basis upon which you left it, in other words, that
24 you were to conduct the appraisal to begin the appraisal
25 approximately a week after?

2 "A Approximately a week after my meeting."

3 Page 66, line 6:

4 "Q Did you indicate to him that this material
5 which he gave you would make it possible for you to come up
6 with an earlier answer?

7 "A It was quite evident that I could."

8 Page 68, line 21 --

9 MR. BRILL: I request Mr. Stream read the next
10 question and answer on page 66, your Honor.

11 THE COURT: Where?

12 MR. BRILL: Page 66, the next question and answer
13 which he left out on line 10.

14 MR. STREAM: I will read those two over again.

15 Line 6:

16 "Did you indicate to him that this
17 material which he gave you would make it possible for you
18 to come up with an earlier answer?

19 "A It was quite evident that I could.

20 "Q When actually, Mr. Thaler, did you agree
21 to do an appraisal for Ajax?

22 "A At the time of my meeting with Mr. Klein
23 in Mr. Shriro's office."

24 Page 68, line 21:

25 "Q What appraisal did Mr. Klein ask you to make,

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"that is, did he ask for an individual value for each piece of equipment or did he ask for an entire price for the entire plant or did he ask for the replacement value or did he ask for a liquidation value, what kind of an appraisal did he ask you to make?

"A He asked for a market value appraisal of the plant intact, in-place, ready for operation.

"Q Did he ever ask for anything more?

"A Yes, subsequently he wrote and he asked me to give him an opinion as to what it would be worth if they had to sell it at a public auction."

Now we turn to page 72, line 12:

"Q When was the next time that you did anything or heard anything in connection with this projected appraisal which you were to make?

"A I believe it was the next day or the following day that Mr. Klein asked me to move up my date for the appraisal if possible in order for them to have the numbers, as he said, earlier than what was originally anticipated.

"Q Was that a telephone call?

"A This was by telephone, yes.

"Q Could you tell us to the best of your recollection what your conversation was with Mr. Klein?

"A When?

A-1597

2 "Q On that day that he called you on the
3 telephone to ask that you make the appraisal at an earlier
4 date.

5 "A I agreed to it.

6 "Q Please first tell us what he said and
7 then what you said.

8 "A Well, he said that it was most important
9 for him to have this evaluation earlier than what was
10 originally contemplated.

11 "Q Yes, did he tell you why?

12 "A Well, I don't recall. I think he said
13 it was necessary for him to use this appraisal to conduct
14 whatever else he had to conduct after he received this
15 appraisal.

16 "Q I see.

17 "A Which I presumed was in connection with
18 making a loan and that in order for me to be able to do that
19 much sooner and not wait for two or three weeks in order to
20 do any investigating as to the --

21 "Q Investigating as to what?

22 "A Do some research work as to the values,
23 the marketability, et cetera, et cetera.

24 "Q What did he say to you, what did Mr. Klein
25 say to you?

2 "A He said that I could rely on the appraisal
3 that was made previously by Hirschmann and Company because
4 they were experts, they were the agents and that could be,
5 that should be very helpful to me in order to get this
6 appraisal through earlier than was originally contemplated.

7 "Q He said that to you again on the telephone?

8 "A Yes.

9 "Q Having said it to you the first, at your
10 first meeting?

11 "A Yes, he repeated it."

12 Page 76 now, your Honor, line 15 -- line 7 on
13 page 76:

14 "Q I don't want you to tell it in principle,
15 I want you to tell us to the best of your recollection what
16 he said from the time that you picked up the phone to the
17 time that you put the phone down, that is, what he said and
18 what you said.

19 "A Well, he said that he would like me to
20 make this appraisal earlier than when I had originally intended
21 to do it.

22 "Q What did you say to that?

23 "A I said that I would do it.

24 "Q Did he tell you what day he wanted you to
25 make an appraisal by?

2 "A He wanted to make it the next day or two
3 days later, just as soon after the conversation as possible.

4 "Q And you said that you would do it?

5 "A That is right.

6 "Q What did he say?

7 "A He realized that this was -- he said he
8 realized that this was asking a great deal to do this on
9 such short notice but he said that he was certain that the in-
10 formation that was contained in the appraisal, in the Hirsch-
11 mann appraisal, was information that I could rely on as to
12 the values in that appraisal and that could help me get that
13 information to him sooner than it would have been normally
14 possible.

15 "Q What did you say to that or was that the
16 end of the conversation?

17 "A That was the end of the conversation.

18 "Q You mentioned something before, I believe,
19 about the fact that he would be waiting in California for
20 your appraisal to be given to him right after you completed
21 it. Was anything said about that during the conversation?

22 "A Yes.

23 "Q What was that?

24 "A He said that when I was through making my
25 rounds at the plant that he would wait up for me in California

A-1600

2 "to get a number and I did this about, wait a minute, I did
3 it about a little after ten o'clock that evening having worked
4 through the entire day.

5 "Q Now you are talking about what you did
6 after the conversation, I am only interested now in what the
7 conversation was.

8 "A I gave him --

9 "Q He told you, you say, during that conversa-
10 tion in which he asked you to do the appraisal sooner that
11 he would be waiting up for you in California, waiting for
12 your call so that you could give him the number?

13 "A Yes, right.

14 "Q Was that the entire conversation you
15 had with Mr. Klein at that time?

16 "A Yes."

17 Page 79, line 6:

18 "Q Following the telephone call which you
19 had with Mr. Klein in which you agreed to do the appraisal
20 earlier, what did you next do in relation to that appraisal?

21 "A Mr. Klein arranged for me to meet Mr.
22 Haakenson who was to be the vice president in charge of
23 manufacturing, to go there to make the appraisal."

24 Let's turn to page 82 -- I will go past that, let's
25 go to 85, and if you wait a minute, Judge, I will go past that,

A-1601

1 Jq/lf

Thaler

590

2 too.

3 THE COURT: I will wait any time you do that.

4 MR. STREAM: Let's go to 97, line 11:

5 "Q Is that the way in which the entire day
6 was spent, you say, from nine o'clock in the morning until
7 ten o'clock at night?

8 "A There was no break in our making of the
9 survey.

10 "Q Therefore, Mr. Thaler, you spent approxi-
11 mately, give or take an hour, thirteen hours?

12 "A About that at the plant.

13 "Q At the plant?

14 "A Yes, but I didn't get home until four
15 o'clock the next morning."

16 Let's turn to page 99, please, line 4:

17 "Q And when you had totaled those figures
18 in that way, what did you do?

19 "A I telephoned to Mr. Klein in California.

20 "Q From the plant?

21 "A From the office of the plant.

22 "Q Did you talk with Mr. Klein?

23 "A Yes, I did.

24 "Q Was there anyone else present while you
25 were talking with Mr. Klein?

A-1602

1 Jq/lf

Thaler

591

2

"A

Mr. Haakenson.

3

"Q

4 What was your conversation with Mr. Klein,
5 and if you will, please, this time try to follow my request
6 that I said and he said and so on to the best of your recollec-
7 tion.

7

"A

I said, 'I have a figure for you.'

8

"Q

Yes.

9

"A

10 And he said, 'What is it?' and I gave it
11 to him.

11

"Q

What figure did you give him, the total?

12

"A

The total.

13

"Q

The total on the tape?

14

"A

15 Yes, and that was the extent of the
16 conversation."

16

Page 102, line 20:

17

"Q

18 Well, there are two different totals,
19 which one are you talking about?

19

"A

20 \$919,000 plus \$137,860 which makes it a
21 total of \$1,056,932.

21

"Q

22 Did you give him the \$900,000 figure as
23 well as the \$1,056,000 figure?

23

"A

Yes.

24

"Q

You broke it down, in other words?

25

"A

Yes.

A-1603

2 "Q Into the descriptions as appearing on this
3 tape, Plaintiff's Exhibit -- referring to a portion of
4 Plaintiff's Exhibit 2 in evidence, you broke it down, in other
5 words, into the descriptions appearing on that exhibit into
6 \$919,072 for the total of individual values of the machines
7 plus \$137,000 which is the 15 percent addition for in-place
8 value?

9 "A Yes."

10 Now at the bottom of page 104, line 21:

11 "Q But in your telephone conversation, Mr.
12 Thaler, do you recall whether you told him what the figure
13 represented?

14 "A Yes.

15 "Q What did you tell him?

16 "A I believe I told him I gave him the total
17 figure including the in-place value.

18 "Q And you told him that that is what you
19 were doing?

20 "A That is right.

21 "Q You told him that it was an in-place
22 value?

23 "A That is right.

24 "Q Did you tell him that this included 15
25 percent addition because of the in-place value?

A-1604

1 39/12

Thaler

593

2 "A This is the question --

3 "Q Did you tell him that this included
4 15 percent addition because of the in-place value?

5 "A This is the formula that we use for
6 in-place?

7 "Q Did you tell him that that was the formula
8 that you had used?

9 "A Yes.

10 "Q So that he would understand?

11 "A Yes."

12 Now to 107 and quickly turn to 141.

13 THE COURT: You skip to 107?

14 MR. STREAM: Yes, your Honor, it refers to the
15 telegram. 141.

16 MR. BRILL: Mr. Stream had represented before today
17 that he was going to read all of this and if he leaves things
18 out I don't object, only that I be allowed to fill in --

19 THE COURT: He will read what he wants.

20 MR. BRILL: Then I want to fill in.

21 THE COURT: It's kind of nonsensical.

22 MR. STREAM: All right.

23 Page 141, and bear with me, your Honor, please,
24 let me see if I can go past that.

25 Let's turn to page 160, line 10:

A-1605

2 "Q No, no, what I am asking you now is
3 whether you replied to the letter of August 23rd," which,
4 your Honor, is Plaintiff's Exhibit 7 in evidence.

5 "A May I see it?

6 "(The witness was handed the exhibit)

7 "A Yes, I did.

8 "Q How did you reply to it?

9 "A They requested additional copies of the
10 appraisal which I mailed to them.

11 "Q With a covering letter?

12 "A Yes.

13 "Q Do you have the covering letter,
14 the copy of the letter there?

15 "A Yes.

16 "Q May I see it?

17 "A Yes."

18 And the witness was then handed -- I beg your
19 pardon, counsel was then handed a document.

20 I ask at this time that this document be marked
21 Defendant's next exhibit for identification.

xxx

22 (Defendant's Exhibit L marked for identification.)

23 MR. STREAM: Being the document identified by the
24 witness at that point and I now offer it in evidence. If
25 counsel has the original I will accept the original.

A-1606

2 If counsel will allow it I will substitute the
3 marking and offer the original in evidence as Defendant's L.

4 MR. BRILL: Consented to, your Honor.

xxx

5 (Defendant's Exhibit L received in evidence.)

6 MR. STREAM: Page 210, your Honor, line 21:

7 "Q Mr. Thaler, have you ever rendered an
8 appraisal of an entire plant as a going concern for any
9 company?

10 "A Is that the end of your question?

11 "Q Yes.

12 "A Yes.

13 "Q When did you do that?

14 "A On many occasions. At the moment I
15 can't recollect. Excuse me, as a going concern, you mean as an
16 in-place value not broken up into individual machines?

17 "Q Yes, have you ever done that?

18 "A Yes.

19 "Q Were you specifically asked by the
20 particular client to do that kind of an evaluation?

21 "A Yes."

22 Page 246 now, your Honor, line 21:

23 "Q Now, Mr. Thaler, when you wrote the letter
24 which has been marked," and that is Plaintiff's Exhibit 4 in
25 evidence or rather Plaintiff's Exhibit 5 in evidence, the

A-1607

2 transmittal letter with the appraisal, "Now, Mr. Thaler,
3 when you wrote the letter marked Plaintiff's Exhibit 5 in
4 evidence at the present trial, you gave it as your professional
5 judgment, did you not, that, 'It is inconceivable that the
6 value would be less than 60 percent of the appraised figures
7 that we have established,' and I end the quote there. Insofar
8 as the values were concerned over the next few years, that
9 was your professional judgment and your best considered judgment
10 as an appraiser?

11 "A As a complete unit, yes.

12 "Q Your statement was, 'It is difficult to
13 project the market values of used machinery for the next
14 two years; however, it is inconceivable that the value would
15 be less than 60 percent of the appraised figures that we
16 have established.'

17 "What I am asking you is whether that entire
18 statement which I have quoted in full was not your best professional
19 judgment.

20 "A The answer is yes, I indicated that the
21 figure for the total value of the plant was, if sold to
22 someone who was to use it for the same purpose for which it
23 was designed in its entirety. I couldn't conceive that it
24 would be worth less than 60 percent of my appraisal as an
25 entire plant.

A-1608

2 "Q Where did you arrive at the figure of
3 60 percent?

4 "A I did not believe based on my own ex-
5 perience that this would be unless some unforeseen catastrophe
6 happened, that this could be worth less.

7 "Q In other words, the 60 percent was just
8 an arbitrary figure?

9 "A An arbitrary figure, yes, based on
10 many years of experience of what valuations and devaluations
11 can create.

12 "Q It was a very rock-bottom, conservative
13 figure, was it not?

14 "A Well, it was a figure -- I wouldn't say
15 it was rock bottom and I wouldn't say it was an exaggerated
16 figure. It was a figure that I established as to what I
17 thought that a willing buyer would be willing to pay to a
18 willing seller utilizing these facilities in their, in its
19 entirety for the production of the work for which this plant
20 was designed."

21 Page 328, your Honor, line 17 or rather line 19,
22 the witness was handed a document and this question was put
23 to him:

24 "Q Would you tell me what that is?

25 "A I made the appraisals of these companies

A-1609

1 "that are listed on this sheet," and the sheet was then marked
2 for identification as Plaintiff's Exhibit 32 during that
3 deposition. I ask that the same exhibit be marked Defendant's
4 Exhibit M for identification.
5

xxx

6 (Defendant's Exhibit M marked for identification.)

7 THE COURT: That was said to be the list of companies
8 for which this witness did values, defendant's witness?

9 MR. STREAM: Yes. And I offer it.

10 THE COURT: All right.

11 MR. BRILL: Objection.

12 THE COURT: Overruled.

xxx

13 (Defendant's Exhibit M received in evidence.)

14 MR. STREAM: That completes my reading, Judge.

15 MR. BRILL: I just have one more page that I would
16 like to read that I thought Mr. Stream was going to read.

17 THE COURT: I hope it's only one. I don't think
18 this should be elaborate at all. You had a chance to read
19 it in the first place.

20 What page?

21 MR. BRILL: Page 107, your Honor, line 23:

22 "Q When was this telegram sent, Mr. Thaler,
23 do you know" -- referring to Plaintiff's Exhibit 30 in evidence.

24 "A Immediately after my telephone conversation
25 with Mr. Klein, I believe from the offices of the plant.

A-1610

2 "that are listed on this sheet," and the sheet was then marked
3 for identification as Plaintiff's Exhibit 32 during that
4 deposition. I ask that the same exhibit be marked Defendant's
5 Exhibit M for identification.

xxx

6 (Defendant's Exhibit M marked for identification.)

7 THE COURT: That was said to be the list of companies
8 for which this witness did values, defendant's witness?

9 MR. STREAM: Yes. And I offer it.

10 THE COURT: All right.

11 MR. BRILL: Objection.

12 THE COURT: Overruled.

xxx

13 (Defendant's Exhibit M received in evidence.)

14 MR. STREAM: That completes my reading, Judge.

15 MR. BRILL: I just have one more page that I would
16 like to read that I thought Mr. Stream was going to read.

17 THE COURT: I hope it's only one. I don't think
18 this should be elaborate at all. You had a chance to read
19 it in the first place.

20 What page?

21 MR. BRILL: Page 107, your Honor, line 23:

22 "Q When was this telegram sent, Mr. Thaler,
23 do you know" -- referring to Plaintiff's Exhibit 30 in evidence.

24 "A Immediately after my telephone conversation
25 with Mr. Klein, I believe from the offices of the plant.

A-1611

2 "Q You mean that you telephoned it in?

3 "A Yes, I think so. The address of where
4 it was sent must be on the telegram. If I remember correctly
5 I think it was 10:52, is that what it says?

6 "Q Yes, 10:52, I take it it means p.m. I
7 am puzzled by the fact it has a date of August 19, 1966, in
8 this corner. Can you explain what that is?

9 "A That is a copy of the telegram that I
10 wired from the plant and we received it at that date."

11 THE COURT: At this date it says, whatever that
12 meant.

13 MR. BRILL: At this date, your Honor, yes.

14 THE COURT: All right. You are through with any
15 reading.

16 MR. STREAM: I am sorry, I have to do this.

17 MR. BRILL: Will you stipulate there was a later
18 date --

19 MR. STREAM: Will counsel stipulate that the witness
20 later corrected his testimony to state that he did not send
21 the telegram the evening he did the appraisal but he sent it
22 on August 17th, will you so stipulate?

23 MR. BRILL: Yes.

24 THE COURT: So stipulated.

25 Are we through with this deposition program?

2 I will begin on page 3, your Honor.

3 THE COURT: Go ahead.

4 MR. BRILL: Line 10:

5 "Q Mr. Kaefer, are you connected with the
6 Hirschmann Corporation of Roslyn Heights, New York?

7 "A Yes, I am.

8 "Q How long have you been associated with
9 that company?

10 "A Oh, I would say about 13, 14 years. I
11 am not that sure.

12 "Q I show you what purports to be a copy of
13 a subpoena"--

14 THE COURT: You don't need to go into that. You have
15 his testimony. What difference does it make?

16 MR. BRILL: This is direct examination by Mr. Stream.
17 Page 4, line 11:

18 "Q What is the business of Hirschmann Corpora-
19 tion, Mr. Kaefer?

20 "A Hirschmann Corporation is a distributor
21 of machine tools that originate largely in Europe. Distributor
22 also and engineer and engineering company that advises its
23 clients as to methods, as to manufacturing ideas, also a
24 tool maker to some degree preparing tools for the machines
25 we sell and a distributor of these machine tools on a nationwide

2 "basis."

3 MR. STREAM: I believe the next question should be
4 read on page 4.

5 MR. BRILL:

6 "Q Addressing yourself to the period around
7 1964, did your company do any distribution work for manufacturer
8 of precision equipment or watchmaking equipment?

9 "A Our company is rather unique and it is
10 a mix or makeup of the equipment we sell. The majority of
11 our equipment comes out of Switzerland and more specifically
12 out of the very narrow little area known as the watch area
13 of Switzerland.

14 "Q Again, directing your attention to the
15 period around 1964 what was your particular connection with
16 Hirschmann Corporation?

17 "A My title at that time and as of now is
18 vice president, engineering."

19 Page 10, line 21, your Honor:

20 "Q Now I would like you to address your
21 attention to the year 1964 and tell me whether you recall hav-
22 ing written a letter and having done an appraisal for a company
23 then called Precision Time Corporation?

24 "A Yes.

25 "Q Let me show you what purports to be a

A-1614

2 "Xerox copy of a letter dated July 1, 1964, from you to a
3 Mr. Jacob Shriro and ask you to note only the letter and
4 disregard for the purposes of this question what appears to
5 be a calling card which was also photographed along with the
6 letter itself. Looking at that letter, tell me whether you
7 can recognize your signature and whether it isn't, in fact,
8 a copy of the original letter which you sent.

9 "A The letterhead, the general tender of
10 the letter and the signature are all genuine."

11 Referring to this letter which I believe is part
12 of Plaintiff's Exhibit 2, that is.

13 Line 19:

14 "Q Notice, if you will, there is an attach-
15 ment to that letter which is headed "Appraisal of Equipment
16 of the Former Precision Time Corporation, Strasburg, Pennsylvania
17 June, 1964." Can you tell us whether or not that appendix
18 was indeed an appendix to the original letter which you have
19 identified?

20 "A My recollection is it was by examination,
21 it seems the original copy."

22 MR. STREAM: If you are going to read it, read it
23 so we can hear it. Speak up. It's important testimony.

24 MR. BRILL: I am sorry, Mr. Stream.

25 Page 13, your Honor, line 23:

A-1615

"procedures did you actually employ at that time and place?

"A At the time I made my examination of the plant the plant was not producing. I don't know whether it was shut down then or whether it was on off days.

"Q Do you remember how long you were down there?

"A Several days, sufficient to gather considerable information."

Page 26, your Honor, line 17:

"Q Is there any way, Mr. Kaefer, that you can tell us what percentage of the machinery and equipment that you examined in 1964 at that plant fell within the categories of fine machinery that you described as distinguished from categories of American companies mentioned at the end?

"A Percentage dollar wise, percentage number wise?

"Q In any way that you find it most intelligent to answer.

"A I can answer it very intelligently by going through the individuals but I can approximate it --

"Q Would you do that?

"A It was not 5 percent of value, that is of typical standard machine tools of American make.

"Q And the other 95 percent in value is

A-1616

1 "represented by what kind of machines?

2 "And the other 95 percent in value is represented
3 by what kind of machine?

4 "A By machines originating in Switzerland
5 bought specifically for the purpose of watchmaking.

6 "Q Would you be good enough to return to
7 the first page and continue your explanation of the headings.
8 You told us about the location identification.

9 "A Well, we also mentioned use and condition.
10 We have not --

11 "Q What does that term mean?

12 "A Use is explained in the appendix to
13 which you referred to before, the use symbol, P.A., production
14 active; P.S., production storage; T., tool making, tool
15 service, et cetera.

16 "Q And condition?

17 "A Condition is explained on the symbol sheet
18 as E. for excellent.

19 "Q G. for good; A. for average; F. for
20 fair and P. for poor.

21 "And what is the meaning of the heading
22 current application?

23 "A The specific use to which this equipment
24 was put.

2 "type."

3 Page 32, your Honor, line 6:

4 "Q I would like you to give us to the best
5 of your present ability your general --

6 "A Opinion.

7 "Q More than your opinion, the knowledge of
8 your command developed and acquired by you from all of your
9 exposure in the industry as to the status of the American
10 watch industry at that time insofar as it had any bearing
11 on your appraisal and the valuation efforts at Strasburg
12 in June, 1964.

13 "A All right.

14 "Q Do you understand that?

15 "A Yes, I understand but it is, of course,
16 a much qualified question.17 "The first question obviously is that
18 in 1964 the fortunes of the watch companies in America were
19 ebbing. Now I made an appraisal for the use of this equipment
20 for the production of watch movements of that caliber, caliber
21 meaning in this case of that model by somebody willing and
22 capable of doing it and I maintained that what I listed as
23 market value for such a purpose is true and right. The party
24 buying that equipment for the purpose of manufacturing the
25 movements for which it was true at the market value would have

2 "bought at the right price."

3 35, line 15:

4 "Q Based, Mr. Kaefer, on your experience
5 and expertise in the industry, do you have an opinion on
6 whether or not the machinery and equipment found in those
7 facilities in June, 1964, depreciated to any substantial
8 extent or would have depreciated to any substantial extent
9 by the summer of 1966 if you assume reasonable regular
10 maintenance and repair service?

11 "A Mr. Stream, you have to qualify what
12 you mean by depreciation. Depreciation physically or
13 depreciation in utility or depreciation in accepted choice?

14 "Q Let's ask you that question. First
15 from the point of view of the depreciation or diminution
16 in its utility or usefulness.

17 "A It would not have usefulness in the mode
18 of the examination date would not have depreciated in the two
19 years.

20 "Q How about depreciation in economic value?

21 "A Definitely.

22 "Q It would have?

23 "A It" --

24 THE COURT: I am lost. Where are you now?

25 MR. BRILL: Page 36, line 7, your Honor.

2 "Q How about depreciation in economic value?

3 "A Definitely.

4 "Q It would have?

5 "A It would have reduced itself in value
6 because of the fact already stated that the watchmaking art
7 was not exactly flourishing.

8 "Q Can you give us any approximation of the
9 extent to which in your opinion that machinery and equipment
10 would have depreciated in value for the purposes at which you
11 evaluated in 1964, that is to say by how much would it have
12 depreciated by 1966?

13 "A To do it fairly you would have to do it
14 individually because some of the machines in that compound
15 are practically the same today, yet some of them are now
16 considered more obsolete in method.

17 "Q Perhaps we don't understand each other,
18 Mr. Kaefer. I am interested in having your opinion based
19 upon your own experience and expertise on whether or not
20 there would have been or was, assuming reasonable and
21 regular maintenance and repair service, any material deprecia-
22 tion in the market value of that machinery and equipment in-place
23 between 1964 and 1966.

24 "A I am sorry, the fact cannot be separated
25 from the physical and economic situation.

A-1620

2 "Q Let me say it again to be sure you under-
3 stand it. Can you give us in your opinion the statement
4 of that percentage of all of the equipment that you examined
5 which would have retained its market value at the same level
6 in 1966 as it was in 1964?

7 "A 75 to 80 percent.

8 "Q Thank you.

9 "A Again I state it is a ball park figure."
10 Page 40, line 15, your Honor:

11 "A And again I state it is a ball park
12 figure."

13 Page 41, your Honor, line 22, cross examination
14 by Mr. Gartner:

15 "Q Mr. Kaefer, you just testified a few
16 minutes ago that it was your ball park estimate that in the
17 period from 1964 to 1966 perhaps 75 to 80 percent of the equip-
18 ment which you examined at Precision Time would what, would
19 have retained their value?

20 "A The way the question was put to me, that
21 was the interpretation. In other words, the value given would
22 have perhaps shrunk down to 75 to 80 percent by 1966 and
23 again I state ball park.

24 "Q I thought that is what you meant, that
25 is why I asked the question.

A-1621

1 Jq/lf

Kaefer

616

2 "A You can ask the statement or my statement
3 to my, my aspect.

4 "Q Yes, but for the purpose of clarification
5 we want to be absolutely sure so we understand what you are
6 saying.

7 "A Yes, on the up side not on the down side.

8 "Q In other words, you are saying that
9 where you gave a value of approximately \$790,000 for the
10 market value for watch use of this equipment, that two years
11 later that same equipment would have been worth approximately
12 \$625,000?

13 "A Yes.

14 "Q And you say that \$600,000, depending
15 upon which percentage you use?

16 "A Yes."

17 MR. STREAM: Please read the next two questions,
18 Mr. Brill.

19 MR. BRILL:

20 "Q And you say that is the up side that --

21 "A No, I didn't say that.

22 "Q I am sorry, I misunderstood you.

23 "A What I mentioned before, the up side,
24 it isn't the 25 percent, it is 75 to 80 percent left, not
25 25 to --

A-1622

1 34/1f

Kaefer

617

2 "Q Oh, I see what you mean, in other words,
3 you are saying that the value would be 75 to 80 percent?

4 "A I think this was the purpose of your
5 question, to qualify whether it was the upper figure or the
6 lower figure.

7 "Q Yes, exactly. So your ball park figure
8 as you say would be somewhere around \$600,000 in 1966 for
9 this equipment?

10 "A Again, qualifying it as a ball park figure
11 given now."

12 Page 44, your Honor.

13 How late do you intend to go this afternoon, your
14 Honor?

15 THE COURT: We will go to half past four.

16 MR. BRILL: Page 44, line 24:

17 "Q When you indicated that the market
18 value for watch equipment about which we are talking was what
19 you indicate"--

20 THE COURT: Wait a minute, you injected some word
21 there. Read it again.

22 MR. BRILL:

23 "Q When you indicated that the market value
24 for watch for equipment about which we are talking was what
25 you indicated on the exhibit which has been marked, what type

A-1623

2 "If a sale were you contemplating, how would that equipment
3 be sold in order to produce --

4 "A To bring that value to a party interested
5 in maintaining the manufacture of the specific watch caliber
6 by --

7 "Q Which those machines were designed to make?

8 "A Yes, and which the tooling was -- don't
9 forget the tooling is very important in this by an organization
10 very similar to the then existing Precision Time organization.
11 In other words, if I want to qualify that or explain it a
12 little bit further, General Motors would not have bought the
13 engine line from Packard when Packard gave up but some
14 of these engine lines were successfully sold to South
15 America, to Germany, et cetera.

16 "Q Some of them wanted to make a Packard?

17 "A Yes, similar in mode and setup and volume
18 to what the company had. This is more or less obvious if
19 anybody --

20 "Q Yes. Would the Hirschmann Company have
21 paid the price which you set for this equipment?

22 "A No.

23 "Q How much would the Hirschmann Corporation
24 have paid for that equipment?

25 "A Much of it we would not under any circumstan-

1 Jq/lf

Kaefer

619

2 "ces have acquired it.

3 "Q How much approximately, 50 percent or --

4 "A How much, let's say it this way to qualify:

5 we are in the market not to sell used machinery. We have no
6 outlets for it. We do it occasionally as an accommodation
7 to a customer who trades it in for a new model but generally
8 we do not deal in used machinery.

9 "Q I see. Did you attempt to make any
10 evaluation at the time that you made your appraisal of what
11 that machinery would be worth as used machinery?

12 "A In --

13 "Q To a dealer who dealt in used machinery.

14 "A I did not.

15 "Q Would that figure be less or more than
16 the figure --

17 "A That figure would be so minimal. It
18 would be horrid.

19 "Q Well, when you say horrid would you give
20 us some estimate of what that figure would be?

21 "A Let's qualify this. The fact is that
22 the equipment is specifically watch, specifically designed
23 to do that purpose and to do that purpose well. Now in a
24 market that where there is a decline of watch manufacturing
25 industry there is, therefore, within that watch industry not

2 "exactly a market for it and for anybody else it has practically
3 no market. Now in percentage wise there is certain machines
4 in there which could be adapted to other things and I dare
5 say 25 percent of it could be again ball park wise assumed
6 to be a figure that is tenable.

7 "Q In other words, 25 percent of the approxi-
8 mately \$790,000 would be the figure which you would guess or
9 assume or estimate as the value of this machinery as used
10 machinery?

11 "A What is value?

12 "Q Well --

13 "A I said it differently.

14 "Q I am sorry, you say it however you please.

15 "A Whether it is realizable..

16 "Q Very good."

17 THE COURT: Whether it's what?

18 MR. BRILL: Realizable. There was a correction made.

19 THE COURT: I don't have it here.

20 MR. BRILL: It's realizable, your Honor.

21 THE COURT: All right.

22 MR. BRILL:

23 "Q Very good, I am glad, you make the
24 correction. In other words, is it your testimony that if this
25 machinery which you appraised under the heading of market value

2 "for watch approx. lately \$790,000 was to at that time, was
3 to have been sold as used machinery without the specific,
4 without a specific purchaser buying it for the specific
5 purpose of manufacturing the very watches or similar watch
6 for which that equipment was intended that the realizable
7 value of that machinery would have been approximately \$200,000?

8 "A Yes."

9 Page 50, line 15:

10 "Q I believe I have accurately written
11 a statement which you made in the course of your testimony.
12 I just want to clarify one word. In response to a question
13 by Mr. Stream you said, 'This is the first big job of
14 appraisal, really the only big job I did.' My only question
15 is when you said this, I take it you meant the job at Precision
16 Time.

17 "A Yes. In other words, we are not professional
18 appraisers and the method of going about it shines through
19 to the whole documentation and through my testimony. I am
20 sure that the usual professional appraiser would have done
21 a faster job than I did."

22 Page 54, line 6:

23 "Q Mr. Kaefer, do you know a Mr. Jesse
24 Thaler?

25 "A Do I know him?

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1 Jq/lf

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2 "Q Yes.

3 "A I met him, I guess once or so, once or
4 twice.

5 "Q When did you meet him?

6 "A He came to our place at one time and
7 wanted to get some, I forget now what the details were.

8 "Q When was that, do you recall?

9 "A About two years ago, a year ago or so,
10 I don't know."

11 This appraisal was taken April, 1970.

12 MR. STREAM: The deposition.

13 MR. BRILL: I apologize, your Honor. This deposition
14 was taken in April, 1970.

15 THE COURT: All right, go ahead.

16 "Q What was the conversation you had with
17 him at that time?"

18 MR. STREAM: I object to the question on the grounds
19 it's past this entire transaction and, therefore, irrelevant
20 and immaterial.

21 This conversation to which the witness is alluding
22 took place in 1968 which was two years after the appraisal
23 and it's, therefore, irrelevant and immaterial.

24 MR. BRILL: That is exactly right and that is why
25 it's relevant. It's an admission by the defendant by his conduct

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2 and his words.

3 MR. STREAM: God damn it, these comments are improper.
4 If the answer goes in we will see.

5 THE COURT: This question has been asked and there
6 has been an objection and it's my business thereupon to
7 decide the matter and I don't want any further argument at
8 this time. This is something about some conversation between
9 Kaefer and the appraiser operating for the defendant.

10 Let me see what it is.

11 MR. BRILL: I request that I be allowed to explain
12 another grounds of admissibility.

13 THE COURT: I am going to look at the paper.

14 MR. BRILL: There are very clear grounds which I
15 would like to state and if necessary out of the presence of
16 the jury.

17 MR. STREAM: Why can't we get a ruling without
18 these incessant comments?

19 THE COURT: Tell me by page and line what you want
20 to get in.

21 MR. BRILL: I might say, moreover, that Mr. Stream
22 was directed to make any objections to this testimony this
23 morning and he stated he had no objections and it could have
24 been argued and decided at that time. He stated he had no
25 objections to any of this testimony.

2 THE COURT: It's immaterial. It's now a specific
3 situation and the jury will disregard this commentary.

4 Now will you answer my questions as to what ques-
5 tions you propose to read into the record.

6 MR. BRILL: Page 54, line 17 to the end of that
7 page, your Honor.

8 THE COURT: Is that all?

9 MR. BRILL: The entire next page, your Honor. Do
10 you want me to state everything I intend to read?

11 THE COURT: No, just say the next page if that is
12 what it is.

13 MR. BRILL: I don't know what Mr. Stream objects
14 to.

15 THE COURT: I am not asking you that. I wish you
16 would attempt to answer the Court's question so that I
17 may intelligently decide this question.

18 MR. STREAM: At the risk of antagonizing you, I
19 withdraw my objection. Let's get along with it. Read it all.

20 MR. BRILL:

21 "Q What was the conversation you had with
22 him at that time?

23 "A Merely that he wanted to have further
24 insight into the appraisal of 1964 and I --

25 "Q Was that the first time you met him?

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2 "A As far as I know, yes. I can't tell you.
3 You see in the course of a year I meet probably 10,000
4 people and --

5 "Q You have no recollection of having met
6 Mr. Thaler before the ~~months~~^{most} two years ago?

7 "A That's right.

8 "Q Do you have any recollection of having
9 had any conversation with him before that time?

10 "A I couldn't say that either.

11 "Q You have no recollection of a conversation
12 with him in 1964, for example?

13 "A Thaler as such is not associated in my
14 mind with this thing but let's say it this way: my memory of
15 names is not superb, ask me about technical things and I --

16 "Q I may ask you a few more questions
17 about that before I finish.

18 "A You should.

19 "Q But at the moment I would like to know
20 whether in" --

21 THE COURT: Where are we now?

22 MR. BRILL: Page 55, line 16:

23 "Q But at the moment I would like to know
24 whether in -- when was the first time you heard the name of
25 Industrial Plants Corporation.

1 Jq/lf

Kaefer

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2 "A To be honest, even today Industrial Plants
3 Corporation means nothing to me.

4 "Q I see.

5 "A I didn't look into it. I had no reason
6 to do it."

7 That is a correction.

8 "I didn't know who they were, what they
9 are doing, whether they are merchants or undertakers or
10 doctors, I have no idea."

11 THE COURT: Now we have learned a lot of things.

12 MR. BRILL: Page 56, line 8:

13 "Q And I believe you had testified that you
14 did not have any conversation with Mr. Thaler, Jesse Thaler,
15 in 1966?

16 "A Yes, I did.

17 "Q In 1966?

18 "A No, not '66, no, not that I know of. I
19 think Thaler came into the discussion sometime last year or
20 the year before.

21 "Q You mean that was the first time you had
22 any recollection of having --

23 "A Having any recollection of having conversa-
24 tion with him.

25 "Q When you say that he wanted to get more

1 Jq/lf

Kaefer

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2 "specifics, I think was your word, about the 1964 appraisal,
3 exactly what was it that he asked you?

4 "A That I can't tell you any more."

5 THE COURT: This is trivia, that is what it is.

6 MR. BRILL: It's not trivia. It goes to the
7 credibility of Mr. Thaler.

8 THE COURT: This is merely my expression and I have
9 a right to comment on it.

10 MR. BRILL: I want to finish this last question
11 and answer on this subject.

12 THE COURT: Go ahead.

13 MR. BRILL:

14 "It is my recollection that he said I
15 am here to discuss this appraisal you did, sometime ago for
16 some association. I said yes, I recall that and I was
17 not about to volunteer too much information because, number
18 one, I did it in behalf of a client, period.

19 "Q Mr. Shriro or Precision Time?

20 "A Right, but I didn't pursue the matter
21 further whether I have the client's permission to discuss
22 it or anything else."

23 THE COURT: You have far enough of that. What else
24 is there in this book?

25 MR. BRILL: Page 64, your Honor, line 15:

1 Jq/lf

Kaefer

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2 "Q There is other precision instrument manu-
3 facturing being done through the use of such machinery, is
4 there?

5 "A Yes."

6 Page 74, line 7:

7 "Q Mr. Kaefer, did you make any examination
8 or investigation in 1965 to 1966 as to the value of the equip-
9 ment which was listed in your appraisal of Precision Time
10 Company?

11 "A Do you mean did I rehash it?

12 "Q That is one way of phrasing it. Did you
13 make any examination?

14 "A Not that I recall.

15 "Q Do you know what the market value for
16 watch use was in 1966 of a Hauser 2 profile miller?

17 "A Mr. Gartner, that happens to be one machine
18 type that is in the obsolescence category, that comes under
19 the 20 percent.

20 "Q That you think in 1966 --

21 "A Had gone down considerably because Hauser
22 in the meantime brought out some new machines.

23 "Q I see.

24 "A That doesn't mean that you cannot use
25 the old machines but market value --

1 Jq/lf Kaefer 631
2 "Q Had gone down considerably in 1966?
3 "A Yes.
4 "Q What about a micro horizontal single
5 spindle profile miller, do you know what the market value for
6 watch --
7 "A Same thing applies.
8 "Q As for --
9 "A What I said about Hauser. You are getting
10 into very, very specific machines."
11 Page 77, your Honor, line 20:
12 "Q What about a Gruen recess and boring
13 machine pedestal, is that a machine --
14 "A Made by Gruen or for Gruen completely
15 obsolescent even at that time.
16 "Q At what time?
17 "A 64 or '66.
18 "Q Now --
19 "A But suitable for the purpose intended.
20 "Q I see. It was your opinion that it would
21 have a lesser value in 1966 than it had in 1964?
22 "A It has because it was on the downgrade
23 of the slide.
24 "Q And you indicated a very sharp downgrade
25 by your motion.

1 Jq/lf

Kaefer

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2 "A

We said so sometime ago.

3 "Q

4 Yes. Mr. Kaefer, what about a builder
5 type one profile miller bench, do you have any idea what the
6 builder --

7 "A

Builder profile miller.

8 "Q

In '66 was --

9 "A

That is definitely in the higher eclipse.

10 "Q

In other words, its value in 1966 --

11 "A

Was much less than in 1964.

12 "Q

13 What about a C.I.H. single spindle
14 profile miller pedestal machine?

15 "A

16 C.I.H. is a company which is a French
17 company that made these things. Its value -- it is a relatively
18 small machine, what is the value given?

19 "Q

20 Please forgive me if I won't tell you.
21 I want to know if you know.

22 "A

23 I know the machine but I don't know what
24 its value is relatively.

25 "Q

Do you know what its value was in 1966?

"A

As compared to 1964?

"Q

Yes.

"A

24 It had -- we have so far picked all
25 specific watch equipment for specific operations and the
further away you got from the target date the faster the

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2 "decline of the market value.

3 "Q So that in this machine it would have been
4 considerably less in 1966 than it was in 1964?

5 "A Right."

6 Page 82, your Honor, and I just have two more pages.

7 THE COURT: That is good news.

8 MR. BRILL: Line 7:

9 "Q Mr. Kaefer, in 1966 how far had the
10 American watch industry proceeded to using fully automated
11 machinery?

12 "A I am not cognizant of the interior
13 development within the watch companies. That is hard to say.
14 At that time already they were leaning heavily towards importa-
15 tion.

16 "Q Of fully automated machinery?

17 "A No.

18 "Q Of what?

19 "A Of watches.

20 "Q Not machinery at all, is that what you are
21 saying?

22 "A We are in the 1960's, we were in the era
23 of the decline of the American watch industry so that today
24 it has progressed so far that there is practically none
25 existent.

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